FILE COPY

APR 18 19
CHARLES ELMORE CR

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

HOWARD MORF, doing business under the firm name and style of Pacific Wholesale Automobile Company,
Appellant,

vs.

JOHN D. BINGAMAN, Commissioner of Revenue for the State of New Mexico,
Appellee.

No. 772

BRIEF ON BEHALF OF APPELLEE
With Appendix

FRANK H. PATTON,
Attorney General for the State of New Mexico.

QUINCY D. ADAMS,
Assistant Attorney General for the State of New Mexico,
Santa Fe, New Mexico.

OF COUNSEL

E. R. WRIGHT,
Santa Fe, N. M.

AMOS M. MATHEWS,
Sioux City, Iowa

SANTA FE NEW MEXICAN PUBLISHING CORP.

INDEX

Page No.

APPELLEE'S STATEMENT OF THE CASE 1- 2

APPELLEE'S STATEMENT OF THE FACTS 2- 4

MATERIAL STATUTORY PROVISIONS 4

SUMMARY OF APPELLEE'S ARGUMENTS 5- 7

APPELLEE'S REPLY TO APPELLANT'S POINT I 7-14

There is No Implied Repeal of Chapter 56 of The Session Laws of 1935 by Chapter 136 of The Session Laws of 1935 7-12

Chapters 136 and 56 Are Complementary, Not Repugnant 12-14

APPELLEE'S ANSWER TO APPELLANT'S POINT II 14-29

Chapter 56 Imposes a Valid Charge 17-22

Proper Comparison of Tax Charged Caravans with Taxes Charged Other Classes Does Not Indicate Caravan Tax Is not a Road Use Tax 22-25

Answer to Appellant's Claim of Conflict in Reasoning of District Court 25

Allocation of Moneys Collected Under Chapter 56 25-29

APPELLEE'S ANSWER TO APPELLANT'S POINT III 29-28

The Statute is Both a Police and Regulatory Measure and a Measure to Exact Compensation for Use of the State Highways 31-32

Specific Provisions of Paragraph (D), Section 1, Chapter 56, Are Not Discriminatory 32-36

The Contemporaneous Construction Placed on the Statute Supports Appellee's Contention as to its Meaning 36

Complete Answer to Appellant's Charge of Discrimination in Favor of Resident Automobile Dealers, Made in His Point III, is that there is no Evidence to Show that Resident Dealers Actually Engage in Caravaning 37-38

POINT IV.

APPELLANT IS NOT IN A POSITION TO URGE THE UNCONSTITUTIONALITY OF THE STATUTES IMPOSING THE FEES IN QUESTION 38-40

APPELLEE'S ANSWER TO APPELLANT'S POINTS IV, V AND VI 40-41

CONCLUSION 41

APPENDICES 42-71

APPENDIX "A"—Chapter 56, Laws of 1935 42-44

APPENDIX "B"—Chapter 136, Laws of 1935 45-56

APPENDIX "C"—Chapter 93, Laws of 1935 57-59

APPENDIX "D"—Section 64-316, 1929 Compilation (Sec. 1, Ch. 154, Laws of 1919) 59-60

APPENDIX "E"—Section 64-210, 1929 Compilation (Sec. 10, Ch. 135, Laws of 1921) 60-61

APPENDIX "F"—Section 64-212, 1929 Compilation (Sec. 12, Ch. 135, Laws of 1921) 61

APPENDIX "G"—Section 11-309, 1929 Compilation (Sec. 9, Ch. 119, Laws of 1929) 61-62

APPENDIX "H" Section 11-319, 1929 Compilation (Sec. 19, Ch. 119, Laws of 1929) 62

INDEX

Page No.

APPENDIX "I"—Section 11-330, 1929 Compilation (Sec. 30, Ch. 119, Laws of 1929) 63

APPENDIX "J"—Chapter 169, Laws of 1933 63-66

APPENDIX "K"—Section 11-333, 1929 Compilation (Sec. 33, Ch. 119, Laws of 1929) 66

APPENDIX "L"—Chapter 154, Laws of 1933 66-70

APPENDIX "M"—Section 141-234, 1929 Compilation (Sec. 234, Ch. 133, Laws of 1921) 71

LIST OF CASES CITED

Aero Mayflower Trans. Co. v. Georgia Public Service Commission, 295 U. S. 285 ..... 17, 19, 21, 23

Beander v. Barnett, 255 U. S. 224 14

Bekins Van Lines v. Riley, 280 U. S. 80 19

Camas Stages v. Kozer, 209 P. 95 (Ore.) 23, 38

Carley & Hamilton v. Snook, 281 U. S. 66 31

Central Lumber Co. v. So. Dakota, 226 U. S. 157 16

Consolidated Freight Lines v. Pfost, 7 Fed. Supp. 629 at 633 ..... 20, 22

Corporation Commission v. Lowe, 281 U. S. 431 ..... 16, 37

59 Corpus Juris 928, 1053 13

Clark v. Poor, 274 U. S. 554 22

Fox v. Washington, 236 U. S. 273 14

Graham v. Goodcell, 282 U. S. 409 ..... 13, 36

Gregg Dyeing Co. v. Query, 286 U. S. 472 31

Hendrick v. Maryland, 235 U. S. 610 ..... 17, 21

Hicklin v. Coney, 290 U. S. 169 ..... 17, 21

Interstate Busses Corp. v. Blodgett, 276 U. S. 245 ..... 12, 36

Interstate Transit Co. v. Lindsey, 283 U. S. 183 ..... 19, 20, 21, 22

James v. County Commissioners, 24 N. M. 509, at page 513; 174 P. 1001 13

Kane v. New Jersey, 242 U. S. 160 ..... 17, 21

Linder v. U. S., 268 U. S. 5 14

McCormick v. Brown, 286 U. S. 131 ..... 13, 36

McMaster v. Gould, 239 N. Y. 606, 147 N. E. 214 13

25 R. C. L. p. 930, Sec. 180 13

Oden Buick Co. Inc. v. Roehl, 36 N. M. 293; 13 Pac. (2nd) 1093 ..... 33, 38

O'Gorman & Young v. Hartford Fire Ins. Co. 282 U. S. 251 ..... 16, 37

Panama Ry. Co. v. Johnson, 264 U. S. 375 14

Patsone v. Pennsylvania, 232 U. S. 136 16

Prouty v. Coyne, 55 Fed. (2nd) 289 ..... 19, 22

Sprout v. South Bend, 277 U. S. 163 ..... 19, 20

Stephenson v. Binford, 287 U. S. 251 16

Sweet v. Rechel, 159 U. S. 380 37

U. S. v. Lee Yen Tai, 185 U. S. 213 13,36

Williams v. Baltimore, 298 U. S. 36 ..... 16, 37

Wood v. U. S., 16 Peters 342 ..... 13, 36

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

HOWARD MORF, doing business under the firm name and style of Pacific Wholesale Automobile Company,
Appellant,

vs.

JOHN D. BINGAMAN, Commissioner of Revenue for the State of New Mexico,
Appellee.

No. 772

BRIEF ON BEHALF OF APPELLEE
With Appendix

APPELLEE'S STATEMENT OF THE CASE

Appellee accepts appellant's statement of the case, but desires to briefly supplement the same.

As appears from the opinion of the Three-Judge Court (R. 32-39) the case at bar was jointly tried with another similar case, the plaintiff in the other case being a party by the name of Piper who resided in Dallas, Texas, and conducted his business generally in the same manner as the appellant Morf. In both cases stipulations of ultimate facts were entered into between the parties. In the Piper case Piper testified as to the manner of conducting his business, and in the case at bar the appellant Morf testified to the manner of conducting his business, while the testimony of the witness Gonzales was offered in both cases. In due course after the hearing, the Court rendered its opinion (R. 32-39).

Thereafter, judgment was entered in the case at bar, dismissing the complaint, and damages were assessed in the sum of $4,825.00 against the appellant and his surety upon the several injunction bonds given by the appellant, as of the 18th day of December, 1935, with interest thereon at the rate of six per cent per annum from the said 18th day of December, 1935, until paid, and for costs of the action to be taxed.

From this judgment of dismissal and judgment assessing damages, an appeal was prayed by the appellant and allowed in due course. Probable jurisdiction having been noted, the case is now before this court for final disposition.

APPELLEE'S STATEMENT OF THE FACTS

Appellee accepts the statement of facts contained in appellant's brief, with certain additions and corrections as hereinafter stated.

At page 5, counsel for appellant state that appellant's cars enter the state of New Mexico at the City of Las Cruces and leave the state at Lordsburg. Reference to paragraph 9 of the stipulation of facts (R. 44) shows that the cars enter New Mexico at the town of Anthony and leave the state at Steins, traveling approximately 166 miles in New Mexico.

The amount of damages fixed in the judgment of $4,825.00 represents the accumulated fees under the caravan act from August 23, 1935, the date of the filing of the bill of complaint, to December 18, 1935, the date to which the damages were computed, and, on the basis of an average fee charge of $6.25 for each car (the act providing for a charge of $7.50 on the lead car and $5.00 on the towed car and a fee of $7.50 where the cars are driven singly), indicates that in a period of approximately four months, the appellant caravanned through New Mexico 772 cars. Between March 6, 1935 and August 23, 1935, the appellant paid to the State of New Mexico, for cars caravanned, the sum of $4,418.75, which, computed on the same basis, would indicate the movement by him of 707 cars in four and one half months.

Appellant's manner of conducting his business is set forth in detail (R. 50 to 52 incl.), and also in the opinion of the Court (R. 33-34). Summarizing appellant's method of doing business, it appears the appellant is engaged in the automobile business in the City of Los Angeles, California. He purchases second-hand passenger automobiles in states lying to the east of New Mexico and drives them over the highways to California for sale, entering the State of New Mexico at Anthony and leaving it at Steins, New Mexico. Approximately 80 per cent of the second-hand cars are models of the years 1934 and 1935. None of these cars exceed 5,000 pounds in weight. All of such cars are driven through New Mexico in caravans or groups. From 75 to 80 per cent of the cars so driven are coupled together with a lead car and one tow car. The remaining 20 to 25 per cent of the cars are driven singly (that is, each car has an individual driver), but all of such singly driven cars are moved in groups or caravans.

In every caravan there are three or four persons hired by appellant who make it a business of driving caravan automobiles, and the remaining drivers are people who happen to be in the East and desire to return to California by driving a car for the appellant. The appellant pays to these drivers, who are not regular employees, in some instances, a dollar a day and expenses, and in some instances, two dollars a day. His regular drivers are sent from Los Angeles, California, to Dallas, Texas, the appellant paying them nothing for the trip except their expenses.

When two cars are coupled together, there is no connection between the braking systems of the lead car and the towed car (Paragraph 10 of the Stipulation, R-33),

The witness Fidel Gonzales testified (R. 52): That he is a member of the New Mexico State Police, located at Las Cruces; that he did not know Mr. Morf but was familiar with the type of operation of cars through New Mexico known as the auto caravan; this type of operation increased the duties of the police 25 per cent in handling and regulating the same; traffic accidents have increased since the caravaning of automobiles was begun; they drive too close together, making it difficult for others to pass, and they

do not keep their lights in shape; that he had warned drivers many times, but had never arrested any of them; that they carry no side mirrors (rear vision mirrors) on the caravan cars (Paragraph 24 of the Stipulation, R-46).

The witness further testified that when two cars are towed together he noticed that when they go around the curve, the back car skids; this applies to the appellant's cars; sometimes the whole caravan stops when car trouble develops; the State Police inspect these caravans for stolen cars, try to get their registration numbers, check their lights, motor number and serial number; the drivers are sometimes women, sometimes men, and sometimes boys; a few of the drivers, in making over-night stops, stop at tourist camps, and the rest sleep in the cars; that sometimes when stopping the drivers, they say "they are tickled to death to get some sleep." That the front wheels of the towed car are free; he had seen some of the appellant's hook-ups skid around the curve and that he had warned the men. It also appears (Paragraph 23 of the Stipulation R-46) that the motive power and brakes on the lead car were originally designed to propel or restrain only one vehicle.

MATERIAL STATUTORY PROVISIONS

In view of the fact that counsel for the appellant, under their Point I attempt to set up a "History and Discussion of New Mexico Statutes Involved," and in view of the fact that the statutes directly involved are statutes in fact inter-related with other statutes, we have included in an appendix copies of certain other statutes of the State of New Mexico not referred to by appellant, the several statutes being designated Appendix "A" to Appendix "M" inclusive, appellee's Appendix "A" being the entire statute a portion of which is set out as appellant's Exhibit No. I; appellee's Appendix "B" being the entire statute which is set out in part in appellant's Exhibit No. II; appellee's Appendix "C" being appellant's Exhibit No. III, and the remaining appendices covering additional statutory references which counsel for the appellee consider pertinent.

SUMMARY OF APPELLEE'S ARGUMENT

I.

CHAPTER 56, LAWS 1935, IS NOT REPEALED BY CHAPTER 136, LAWS 1935, BUT THE TWO ACTS ARE COMPLIMENTARY.

There is no specific repeal of the earlier act in the later act. The two acts were passed at the same session of the legislature from which it follows that the presumption is most strongly against implied repeal. The two acts must be construed in pari materia. Analysis of the two acts shows conclusively that there is no repugnancy between the provisions of the two acts. Every part of each act can be given full effect without any conflict.

The terms of the two acts are so plain that no construction is necessary.

II.

CHAPTER 56, LAWS 1935, DOES NOT CONFLICT WITH THE COMMERCE CLAUSE OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES.

The Act does not lay a tax on the privilege of engaging in Interstate Commerce. The classification which it makes rests upon the natural basis of those who use the highways for the purpose of private gain, and move vehicles over the highways in integrated groups commonly known as "Caravans". The Act contains the necessary requirements or indicia to make it valid as imposing a charge for the use of the highways and for highway regulation. The fact that the charge is a flat sum is not material. Practically all of the proceeds of the fees are devoted to highway construction and regulation. The amount of the exaction is reasonable.

III.

CHAPTER 56, LAWS 1935, DOES NOT DENY TO THE APPELLANT THE EQUAL PROTECTION OF THE LAWS AND, THEREFORE, DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

The classification is based upon natural and logical grounds. There is no discrimination made between residents and non-residents, or between resident automobile dealers and non-resident automobile dealers. A resident automobile dealer desiring to caravan in intra-state or interstate commerce must comply with Chapter 56, Laws 1935, to the same extent as appellant.

Under the provisions of Chapter 56, Laws of 1935, the appellant has the optional right to pay the regular registration fees for license plates, and thereby escape the payment of the caravan fees, or, in the alternative, to pay the caravan fees without taking out regular license plates under the general registration laws.

IV.

APPELLANT IS NOT IN A POSITION TO URGE THE UNCONSTITUTIONALITY OF CHAPTER 56, LAWS OF 1935.

Other laws which appellant does not attack, chiefly Chapter 169, Laws of 1933, would require appellant to pay, in order to caravan, the regular license plate registration fees required of residents of the State. Chapter 56, the only law the appellant attacks, provides certain exemptions from the registration requirements of Chapter 169, including the right to caravan by payment of the caravan permit fees which are normally much lower than the fees required by Chapter 169. Thus the law which appellant attacks gives him more favorable position than the law which he does not attack.

V.

APPELLEE'S ANSWER TO APPELLANT'S POINTS IV, V AND VI.

The objections to the stipulated facts, findings of fact made by the Court and the decree entered thereon, do not present any questions for review here.

I.

APPELLEE'S REPLY TO APPELLANT'S POINT I.

On pages 13 and 14 of appellant's brief is a discussion of certain New Mexico statutes involved in the case. Appellee will answer the argument on these pages and will refer to other statutes bearing on the questions at issue in our answer to appellant's Point II.

THERE IS NO IMPLIED REPEAL OF CHAPTER 56 OF THE SESSION LAWS OF 1935 BY CHAPTER 136 OF THE SESSION LAWS OF 1935.

Reading Chapter 136, Session Laws of 1935 (Appendix "B"), it is apparent that such Act is primarily a police measure and is almost entirely adjective law. In substance it sets up machinery by the means of which the state may attain greater efficiency in the administration of its various laws designed to promote safety in the use of the highways and greater efficiency in and uniform application of its laws and taxes to highway users, particularly those engaged in interstate commerce. It contains no substantive law defining any duties of those who use the highways except that they are required to submit themselves to certain inspections of their equipment and cargo and, in some cases to pay certain fees to defray the cost of the administration of the Act and for the maintenance and construction of the highways. Obviously the expense to the state of maintaining this somewhat elaborate system is substantial. The record in these cases shows that the expense of administration has already consumed about 50 per cent of the collections made. The Act provides that

such expense shall be ultimately prorated and charged against the respective funds benefitted.

The mileage tax imposed by the Act applies only to motor vehicles not registered in the State of New Mexico, and is assessed against only two classes of such non-residents, (a) those transporting passengers or property for hire and (b) those transporting property not for hire. Chapter 56, Session Laws of 1935 (Appendix "A"), classifies and exempts from registration only limited groups from whom the mileage tax revenue would be obviously small. That portion of the stated purpose of the Act, which, in addition to defraying the cost of administration, provides for the use of the funds for highway purposes was apparently inserted to dispose of any residue after the payment of such expenses. Chapter 136 is replete with references to other statutes and is obviously intended to be supplemental and auxiliary to the body of the state law then in existence. At no place in the chapter is there any specific repeal of or amendment to any other statute. If paragraph (d) of Chapter 56 is repealed it is repealed by implication.

The rule is against implied repeal unless an irreconcilable repugnancy exists. The two statutes must be so construed, if possible, to give full force and effect to both. Statutes must be so construed as to sustain their constitutionality. The burden is upon appellant to show that such acts are in fact repugnant. The statutes have not been construed by the state courts of New Mexico. If, under any reasonable construction, the two acts may be reconciled, it is the duty of the court to adopt such construction. Both Chapter 56 and Chapter 136 were enacted during the same session of the legislature.

It is the contention of appellee that both acts are wholly consistent and in harmony with each other. Appellant contends that the transportation of property as defined in Section 13, Chapter 136 (Port of Entry Act) includes the purpose for which his vehicles are operated. This, appellee concedes. Appellant contends that since such vehicles are not registered or licensed in this state and are transporting property not for hire they come within the class defined in paragraph (e) of Section 6 of said Port of Entry Act. This, appellee also concedes. Appellant

then contends that his vehicles are therefore amenable to the second portion (unlettered) of Section 8 of said Port of Entry Act, which imposes a special tax for the use of the state's highways; that his vehicles fall in the class set out in sub-paragraph (1) of said portion, being of less than 15,000 pounds gross weight; and should pay in advance at such ports of entry when entering the state a tax of one and one-half cents per mile for each mile they are to be operated over the state's highways. All this appellee concedes and asserts.

The appellant concedes that by payment of the regular license plate fees he may, pursuant to the last paragraph of Section 8 of said Chapter 136, be relieved of the payment of the mileage taxes above mentioned but that such relief is not obtained by the payment of the "special permit" or "caravan fee" provided in sub-paragraph 3 of paragraph (d) of said Chapter 56. He concedes that unless said paragraph (d) of said Chapter 56 has been repealed by Chapter 136, if he fails to pay the regular license plate registration fees he would be obliged to pay both the mileage tax and the special permit or caravan fee. That is the position of appellee. Appellant contends, however, that, for some reason not quite clear to appellee, the fact that Chapter 136 extended the right to avoid payment of the mileage tax by payment of the license plate fee without extending that privilege on payment of the special permit fee in paragraph (d) of Chapter 56, evidenced the intention of the legislature to repeal said paragraph (d) of Chapter 56. This, appellee cannot concede.

Because, under certain circumstances, appellant might escape payment of the said mileage tax, it does not follow that by the payment of the mileage tax he may escape payment of any registration, license, caravan or any other fee. The privilege conferred upon him to escape the mileage tax by payment of the fee does not, by any means, carry with it the right to escape the fee by payment of the mileage tax.

The general rule is that all motor vehicles operated over the highways of the state should be registered and should pay the regular license plate fees. If appellant or any others are exempt from such fees they must rely, for such exemption, upon the provisions of the said Chapter

56 and not upon any provisions of the Port of Entry Act, said Chapter 136.

Paragraphs (a), (b) and (c) of said Chapter 56 should be read in connection with this issue. They permit certain vehicles owned and operated by non-residents to enter the state without payment of any registration fee. Many vehicles included within the class defined in paragraph (e) of Section 6 of Chapter 136, are so exempted from registration, and payment of license plates fees. The purpose of Section 8 of Chapter 136, (the Port of Entry Act) was to exact from such vehicles engaged in the transportation of property not for hire, the payment of the nominal mileage taxes there assessed.

However, the first sentence of paragraph (a) of Chapter 56 extends such exemptions from registration to non-resident owners "*except as otherwise provided in this section.*" Paragraph (d) is a part of the same section, pertains to caravan operations and therefore provides otherwise than the limited exemptions in paragraphs (a), (b) and (c) of said chapter. *Obviously,* caravanned cars are not, by the first three paragraphs of Chapter 56, exempted from registration but are treated separately, definitely and specifically by paragraph (d) of said chapter.

Special attention is called to the fact that paragraph (d) is stated in the alternative. One driving automobiles over the highways may either (1) register his cars under the general registration statutes in the same manner as any other citizen, pay the fees therefore, for which he receives a set of license plates, or (2) he may apply for a special caravan permit and pay the fees therefor, for which he receives a certificate and a suitable tag or placard, or (3) if he is a dealer licensed by the state and owns the cars and wishes to demonstrate them, he may drive them over the highways for that purpose and may offer them for sale in conjunction with such demonstration by the mere use of his dealer plates.

The cost of license plates for some vehicles is materially greater than the caravan fees imposed by subparagraph 3 of paragraph (d). (See Sec. 9, Chapter 169, Session Laws of 1933, Appendix "J".). For some vehicles this cost is less than such caravan fees, dependent

upon the weight and age of the cars in question and the quarter of the year during which licensed. (Appendices "K" and "J"). By the terms of paragraph (d), Chapter 56, appellant may elect to either buy license plates or pay caravan fees, it being presumed that he would take whichever course is the cheaper. The intent of both Chapter 56 and Chapter 136, read together, is not only to require appellant to pay for the use of the highways, but also to protect him from any obligation to pay any sum greater than that exacted of a resident of New Mexico for the privilege of general highway use.

Under a proper interpretation of both acts appellant is required to pay both a caravan fee as set out in sub-paragraph 3 of paragraph (d) of Chapter 56, (Appendix "A"), and a mileage tax as set out in Section 8 of Chapter 136 (Appendix "B"). However, if he should elect to pay the regular registration fees and obtain license plates, pursuant to the provisions of sub-paragraph 1 of paragraph (d) of Chapter 56, the effect of the last paragraph of Section 8 of Chapter 136 is to relieve him of the mileage tax.

This, and nothing more, is the intention of these paragraphs. The effect of this interpretation is to provide that caravaners, such as appellant, shall pay the same fees for the use of New Mexico highways as do residents of the state, provided that they shall not, under any circumstances, be required to pay any more than $7.50 or $5.00 per car plus the mileage tax in Chapter 136 provided.

This interpretation of the two acts is wholly reasonable and logical, gives full force and effect to every provision of both chapters and avoids any mandatory judicial finding of unconstitutionality in either of them. The reasonableness and effect of the mileage tax, considered separately or as combined with the caravan fee, is not in issue because not raised by appellant. The mere fact that the effect of sub-paragraph 3 of paragraph (d) of Chapter 56 results in the imposition of two kinds of tax as compared with only one kind under sub-paragraph 1 of said paragraph (d) has no bearing on the validity of the charge or charges.

Appellant's argument on pages 16 and 17 of his brief, to the effect that the legislature enacted part of Chapter 136 to replace Chapter 56 because it realized the latter act

was unconstitutional, besides being wholly a product of appellant's imagination and without any foundation of fact, most distinctly begs the question. Whether Chapter 56 is constitutional must be considered altogether apart from the proposition of its implied repeal by Chapter 136. If it is valid of itself it is not rendered invalid by the additional mileage tax imposed by Chapter 136. *Interstate Busses Corp v. Blodgett,* 276 U. S. 245. So assuredly the fact that the legislature imposes a second tax does not indicate as a matter of law any lack of faith in the validity of the first.

The vice in appellant's position is most clearly shown by his deduction based upon his analysis of the provisions of Chapter 136 (the Port of Entry Act) in the first paragraph on page 18 of his brief. Appellant states that Chapter 136 grants an operator subject thereto the option of paying the mileage tax or of paying the fees required for regular license plates under the general registration and license law. Appellant further points out that the caravan permit fees which he is attacking are not included within the description of such general license plate registration fees; that is, that the caravan permit fees are not fees as to which there exists the option of payment authorized by Chapter 136. With that analysis appellee agrees; the act plainly so provides.

But appellant's reasoning based upon the foregoing is plainly erroneous. The rule "expressio unius est exclusio alterius" does not apply because we are here considering two acts (Chapters 136 and 56) which are plainly complementary.

Such rule likewise cannot be invoked as evidence of an implied repeal; rather, the omission of mention of the caravan permit fees in the later act (Chapter 136) shows a legislative intent *not* to include them in the "options" authorized therein.

CHAPTERS 136 AND 56 ARE COMPLEMENTARY, NOT REPUGNANT.

Under Chapter 136 appellant is required to pay a mileage tax which, at his election, he may avoid by the payment of the regular license plate registration fee in lieu

thereof. Under Chapter 56 he can elect to pay either such regular license plate registration fee or the caravan permit fee. Both give him the right to pay the regular license plate registration fee and no more; there is no conflict in that respect. Both, read together, require him to pay the mileage tax and the caravan permit fee, on failure to pay the license plate registration fee; there is no conflict in that respect.

A rule exists which is far superior in effect to the principle of implied repeal. This is the rule that acts passed at the same legislative session are to be construed *in pari materia*. *McMaster v. Gould*, 239 N. Y. 606, 147 N. E. 214; 25 Ruling Case Law, p. 930, Sec. 180. 59 Corpus Juris 928, 1053. Here are two acts which create no awkwardness of construction whatsoever: when their terms are familiar they are not even open to construction. No administrative or judicial rulings are necessary to enable one understanding the English language to ascertain exactly what is the effect of both acts.

Chapter 136 does not cover the field of Chapter 56. It does not attempt to relieve those subject thereto of the caravan permit fees required by Chapter 56. Rather, by Section 13 of Chapter 136, the classification originally created by Chapter 56 is by definition made subject to the requirements of Chapter 136.

In support of this proposition we cite upon the question of implied repeal the following cases:

Wood v. U. S., 16 Peters 342
McCormick v. Brown, 286 U. S. 131
U. S. v. Lee Yen Tai, 185 U. S. 213
Graham v. Goodcell, 282 U. S. 409

The rule is recognized in New Mexico.

James v. County Commissioners, 24 N. M., 509, at page 513; 174 P. 1001.

Where the two statutes are practically contemporaneous statutes, passed at the same session of the legislature, the presumption against implied repeal is still stronger.

There is another axiom of statutory construction which should be borne in mind at this point, namely: that a statute must be construed, if possible, so as to avoid holding it unconstitutional.

Fox v. Washington, 236 U. S. 273.
Beander v. Barnett, 255 U. S. 224
Panama Ry. Co. v. Johnson, 264 U. S. 375
Linder v. U. S. 268 U. S. 5

II.

APPELLEE'S ANSWER TO APPELLANT'S POINT II.

On page 20 and the first half of 21 of Appellant's brief he urges that the caravan permit fee levied by Chapter 56 is a tax directly upon the vehicle, that is, upon a subject of interstate commerce. He bases this claim upon the proposition that if motor vehicles are transported upon their own wheels, for any purpose other than sale, the caravan permit fee does not apply to them. He claims, therefore, that the fee is not a fee for the use of the highway, but rather upon the purpose of the transportation, that is, sale.

A brief analysis easily demonstrates the error in Appellant's contention at this point. There are several complete answers.

Appellant admits, at the top of page 34, that " a proper tax classification of vehicles moving in integrated groups or fleets might be proper," but urges that Chapter 56 does not accomplish such classification. In this appellant is clearly mistaken. The record shows that there existed and exists a practice of moving motor vehicles on their own wheels over the public highways in order to take them to the place of sale. The record further shows that the regular practice was and is to move these cars in integrated groups or fleets, for practical purposes described as *"caravans."* Seventy-five to eighty per cent of the cars in such caravans are joined in tandem, or two-car "hookups," the two cars being moved by one driver in the lead car, such second car being towed by the lead car. Although the re-

maining twenty to twenty-five per cent of such cars may be driven singly, the record shows that they are handled as a part of the integrated group or fleet under the control or management of the caravan manager. (R-44 and 51). By reason of this manner of operation and the type of drivers employed traffic hazards were increased, an extra burden was thrown upon traffic officers, and other abuses grew. The legislature sought to enact a measure to meet this situation. The class to be the subject of this legislation must be properly defined to create a valid classification. The record in the trial of this case attests the validity of the classification. The record shows that Appellant caravans his cars across the state in accordance with the general practice, that is in groups or integrated fleets, with seventy-five to eighty per cent of the cars in tandem. (R-44-51.) The record fails to show that either the appellant or others move such cars over the highways of the state in any manner other than that described above. There is no evidence in the record that cars are moved on their own wheels upon the highway in a similar manner for any other purpose than for sale.

So when the legislature desired to enact a law to meet this fact situation it is plain that the definition of the class which it adopted plainly defines the class against which the law is directed, and that the class included in the legislative description does not, in fact, include any other motor vehicle movement except the integrated fleet movement above described.

Where an act of the legislature creates a class which the actual facts show to comprise those subject validly to classification, that such fact does not appear in the statute is no objection to it. Whether a statute validly classifies is largely a question of practical fact. That is, "we start with the general consideration that a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience."

Patsone v. Pennsylvania 232 U. S. 136
Williams v. Baltimore, 289 U. S. 36
Central Lumber Co. v. So. Dakota 226 U. S. 157
O'Gorman & Young v. Hartford Fire Insurance Co. 282 U. S. 251
Corporation Commission v. Lowe, 281 U. S. 431

Appellant complains of the segregation of those engaged in caravaning into a separate class, alleging that it is improper and therefore deprives him of equal protection of the laws. Analyzing the basis for the class we find two fundamental requirements, to-wit: 1. Motor vehicles being moved for purpose of sale, and 2. Those being moved for that purpose on their own wheels.

The first limitation of the class is amply justified by the familiar rule that "the highways of the state are public property, their primary and preferred use is for private purposes; and their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit." *Stephenson v. Binford,* 287 U. S. 251. Public highways are used by all manner of motor vehicles for many different purposes. The segregation of those being moved over the roads for the purpose of sale properly and effectively separates those vehicles using the highways for purposes of gain, from that great class of vehicles of identical kind and character but which are making a private use of the roads, a use of public highways for which such highways are primarily intended. Certainly one who makes a business of moving vehicles over the public highways in order to move them where they may be sold, does so for the purpose of gain. Since the vehicles included within the class defined as caravans (those making a use of the public highways for purpose of gain), are by the terms of the definition properly segregated from other vehicles using the highways for private purposes, the second limitation in the definition, to-wit the movement of the vehicles on their own wheels, rests upon a natural, physical attribute of the business. Motor vehicles included within the defined class in question are both the subjects of commerce and the instrumentalities of conducting the commerce. That an automobile being

moved for the purpose of sale is merchandise is a conclusion which is not subject to question. The mere fact that the merchandise itself is the instrumentality through which its movement is accomplished does not endow it with specific immunity from the application of the general principles of law. An automobile which is using the public highways to move itself or a towed vehicle is making no less use of the public highways than if it were used to transport other merchandise or persons for gain. Yet the record shows characteristics in the nature of such movement which are peculiar to transportation of such automobiles as distinguished from other freight. Automobiles being so transported for purpose of gain, being properly segregated from automobiles making a private use of the public highway, are, as shown by the record, proper subjects for separate classification by reason of the peculiarities of the methods used in such movement, and the additional burdens imposed upon the highways and the policing of the same.

CHAPTER 56 IMPOSES A VALID CHARGE.

Commencing in the middle of page 21 of his brief, appellant discusses the subject of the requirements of a valid motor vehicle tax for the use of highways in interstate commerce. On page 23 appellant cites most of the relevant cases on that subject.

We particularly desire to call to the Court's attention, at this point, that in the following four cases this Court sustained the validity of state motor vehicle license fee laws, which imposed upon interstate motor vehicle operators a flat tax not varying with the mileage travelled, and which was required for even one trip per year through the state.

Hendrick vs. Maryland, 235 U. S. 610
Kane vs. New Jersey, 242 U. S. 160
Hicklin vs. Coney, 290 U. S. 169
Aero Mayflower Transit Co. vs. Georgia Public Serv. Commission, 295 U. S. 285

Commencing with page 24, appellant adduces figures to support his claim that the caravan permit fee is not compensatory. Appellant for his own special convenience desires to travel 166 miles through the state. He, therefore, concludes that the mileage rate, which he arrives at by dividing the distance which he travels into the fee fixed under the caravan act, is excessive and discriminatory when compared with the mileage fees set forth on pages 24 and 25 of appellant's brief.

The fallacy of this argument is apparent. The caravan act is a general act applying all over the state and to all who pass throught the state, regardless of the distance travelled. By way of illustration, if the appellant had elected to enter the state of New Mexico at the Raton gateway on the north boundary of the state, with ultimate destination in California, he would travel over U. S. Highways 85 and 66, leaving the state at the Gallup gateway, necessarily travelling some 430 miles. If he elected to enter the State of New Mexico through the Raton gateway, with ultimate destination, El Paso, Texas, he would travel over U. S. Highway 85, and necessarily travel some 500 miles. Again, if he entered New Mexico at the Texaco gateway, with destination California, crossing the state from East to West, he would necessarily travel some 400 miles.

Again the fallacy of appellant's argument is apparent from a mere reading of the act which does not limit the use of the caravan permit either by way of mileage travelled, route travelled, or the number of times he may enter and leave the state under the same permit, so long as the car is being transported for sale. In other words, if the appellant drove his car to California and found no market for the same in California, he has a perfect right, under the caravan permit act, to return through New Mexico or into New Mexico with the car, without paying any additional permit fee.

Therefore, the comparisons which appellant makes on pages 24, 25 and 26 of his brief, are not applicable.

> "The appellant urges the objection that its use of roads in Georgia is less than that by other car-

riers engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. The fee is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed. Cf. Clark v. Poor, supra; Hicklin v. Coney, supra. One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may."

Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n. 295 U. S. 285.

Another patent defect in appellant's reasoning at this point is shown by the following: Appellant is in a well-defined class, which in the manner of its use of the highways by caravan motor vehicles is clearly distinct from any other class of highway users. (See our introductory argument under this point, supra.) Being in a separate classification, appellant can be required to pay other and different license fees than others in different classes are required to pay.

Bekins Van Lines vs. Riley, 280 U. S. 80.

Commencing with page 26 of his brief, appellant cites, quotes and places great reliance upon *Interstate Transit Co. vs. Lindsey,* 283 U. S. 183, and *Sprout vs. South Bend,* 277 U. S. 163. He also cites *Prouty vs. Coyne,* 55 Fed. (2nd) 289.

An analysis of the two cases chiefly relied upon reveals that the holdings therein upon which appellant leans for support are not applicable to the case at bar.

Taking first *Interstate Transit Co. vs. Lindsey.* A complete body of motor vehicle law existed in Tennessee, including license fee exactions, but the law held invalid was not among these. Rather it was one item of a voluminous general privilege tax law applying to over 100 different types of businesses (practically every kind of business in the state); that is, it was a part of the large general body

of revenue law of the State rather than a part of the motor vehicle license fee laws. This Court held the foregoing to be enough to invalidate the law, saying this indicated an intention not to require compensation for use of the highways, but simply an intention to tax the business of interstate commerce by motor vehicles along with every other business. Then the Court goes on to point out that the tax there in question, besides the infirmity just stated, did not contain any provision indicating the intent of the legislature that the law in question imposed a tax as compensation for the use of the highways. Thus the Court points out that the proceeds are not devoted in any part to highway maintenance, and that the tax was not graduated in proportion to the use made of the highways (the tax involved license fees up to $750.00 per year). As we read that case, the Court held the law invalid because it did not contain even one of the indicia of laws which have been sustained by this Court even prior to *Hendrick vs. Maryland*, cited supra, upon the theory that the state is entitled to compensation for the use of facilities provided by the state. With all deference, we believe that such license tax in *Interstate Transit Co. vs. Lindsey*, would have been sustained by this Court had it contained any one of such indicia. In other words, in the two cases relied upon by the appellant, there is not a single one of the indicia that the tax was exacted as compensation for the use of the highways.

An analysis of *Interstate Transit Co. vs. Lindsey*, substantially similar to the foregoing, is contained in *Consolidated Freight Lines vs. Pfost*. 7 Fed. Supp. 629, at 633, a three-judge case in the District Court of Idaho.

In *Sprout vs. South Bend*, supra, there was involved a city ordinance imposing a $100 license fee upon interstate busses. The fee was plainly too large to be sustained purely as a police power measure. The proceeds were not devoted in any part to highway maintenance or consfruction, and it was not graduated in proportion to the use. Thus again the Court dealt with a law containing not one of the indicia of a law imposing a charge for the use of facilities furnished by the state to an interstate operator.

Now compare the case involved in those two cases with

the law in question here. In the first place, the caravan license law is a part of the general motor vehicle registration and licensing laws of the State of New Mexico, and the act itself declares that the permit is issued and the fee exacted for the use of the highways. This is conceded at the bottom of page 13 of appellant's brief and clearly appears from the act and the New Mexico statutes set out in the appendix hereto. Thus one of the indicia, and one which the Court first remarks upon and which it emphasizes as being absent in *Interstate Transit Co. vs. Lindsey,* supra, is present in our case. In the second place, practically all of the proceeds of the caravan permit fees are directly allocated by law to the enforcement of the act and to highway construction, maintenance and traffic regulation, and the balance is devoted indirectly to these purposes. This feature will be discussed more fully later herein. So at this point the caravan permit fee law is found to contain two of the indicia lacking in the cases upon which appellant relies. In the third place, while the permit fees here involved are not graduated according to the use made of the highways, nevertheless, they are small in amount and by appellant's own analysis, are not excessive. In any event, the law pertaining to this third feature is clearly governed by *Hendrick vs. Maryland,* cited supra, *Kane vs. New Jersey,* cited supra, *Hicklin vs. Coney,* cited supra and *Aero Mayflower Transit Co. vs. Georgia Public Service Com'n.* which we have cited and quoted from above.

At this point we desire to repeat part of a quotation from *Interstate Transit Co. vs. Lindsey,* supra, which appears in the middle of page 27 of appellant's brief. This quotation summarizes the indicia above referred to, and, it is to be noted, states them in the alternative:—

> "As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use (Interstate Busses Corp. vs. Blodgett, 276 U. S. 245), *or*

by the express allocation of the proceeds of the tax to highway purposes as in *Clark vs. Poor,* 274 U. S. 554, supra, *or* otherwise. (Italics ours).

Appellant cites, but does not appear to rely much upon *Prouty vs. Coyne,* 55 Fed (2nd) 289. This case is criticized in *Consolidated Freight Lines vs. Pfost,* supra. It is there pointed out that the Court in *Prouty vs. Coyne,* misconstrued *Interstate Transit Co. vs. Lindsey,* and we submit that a reading of the Prouty case will so disclose. Furthermore, in the Prouty case extremely large license fees, up to more than $500.00, were required for single trips through the state.

There is a further vice in appellant's reasoning based upon these three above cases upon which he particularly relies. In each of those cases the fees held invalid as to interstate motor vehicle operators were compared by the Courts with fees charged intra-state operators in exactly the same class as the interstate operators. Such cases, therefore, do not support appellant's argument since he compares the caravan fees charged him with fees exacted from others in a totally different class.

PROPER COMPARISON OF TAX CHARGED CARAVANS WITH TAXES CHARGED OTHER CLASSES DOES NOT INDICATE CARAVAN TAX IS NOT A ROAD USE TAX.

Appellant contends (pages 24-29) that the caravan fee is not compensatory, is therefore a direct charge upon the privilege of engaging in interstate commerce or upon the subjects of interstate commerce, and not a road use charge; and attempts to prove his contention by a claim that those who caravan, as a class, pay fees greatly in excess of fees paid by other classes of highway users. The argument is apparently advanced, not to prove discrimination, but as evidence to identify the character of the caravan tax. In this argument appellant wanders far afield from the proper sphere of judicial inquiry. Without, in any way, conceding the propriety of appellant's contention, it is submitted that his entire argument, although im-

proper, falls because it is based on a false premise and the conclusion is entirely erroneous.

A glance at Chapter 136 shows that it was written with due regard to the provisions of many other statutes. Both Chapter 56 (Appendix "A") and Chapter 169 (Appendix "J") were obviously considered. Chapter 169 requires the registration of all vehicles. Chapter 56 contains certain exemptions, and, being in derogation of the general rule, must be construed strictly against one who claims the exemption.

Camas Stages vs. Kozer, 209 P. 95 (Ore.).

Paragraph (b) of Section 1 of Chapter 56 limits paragraph (a) of the same section by requiring the registration of all vehicles transporting property for compensation or transporting merchandise, except those engaged in caravaning, who are separately treated in paragraph (d) of the same section and except the limited class defined in the same paragraph (b) as those vehicles "used exclusively in the transportation of livestock, lumber, farm or dairy products, from the place of production to market, or in the transportation of a return load" of the same commodities. This treatment of this latter class indicates a legislative intent to favor such a class which the legislature had a perfect right to do, *Aero Mayflower Transit Co. vs. Georgia Public Service Com'n.* supra, and discrepancy in fee charges to this class certainly cannot be used as descriptive of the legislature's ideas of the value of road use.

Reading Chapter 169, Chapter 56 and Chapter 136 together it will be observed that, aside from pleasure cars transporting passengers not for hire and aside from such other vehicles as transport property not included in the broad term of "merchandise," if any such exists, and which is not being so transported for hire, the only class of highway users other than caravaners which is exempted from the payment of the regular registration license plate fee is the above described class of agricultural users. All those using the highways to move property for compensation and all those using them to transport merchandise, as does the appellant, must pay the registration fee provided

in Chapter 169. Such other classes of users are not in fact given as great latitude as is appellant because they must pay the registration fee while appellant is given the option to pay the mileage tax and the caravan fee *or* to pay the registration fee. Appellant in referring to tax charges against a 25,000 pound truck has compared a combination of mileage tax and caravan fee, as paid by him, with only the mileage tax, when he should have compared his charges with only the registration fees as paid by such other classes.

Appellant cannot contend that he is not engaged in transporting merchandise. If his cars are not intended for sale they are not within the class. A fair comparison of charges implies some fair basis of comparison. Charges against appellant, if they are to be compared at all, must be compared with the charges applied to others who transport merchandise. Comparing the caravan fee combined with the mileage tax against the registration fees to which charge other classes are amenable and computing under the provisions of Chapter 169 it will be observed that the same truck referred to by appellant would in fact be required to pay the following registration fees:

	IF NEW		IF TWO YEARS OLD	
	Flat sum	Per mile for 166 mi.	Flat sum	Per mile for 166 mi.
If weighing 25,000 pounds unladen	$478.00	$2.87	$357.00	$2.15
If weighing 12,500 pounds unladen	228.00	1.37	179.00	1.07
If weighing 5,000 pounds unladen	78.00	.46	57.00	.34

	CARAVAN CHARGES IF TOWING CAR		IF TOWED CAR	
	Flat sum	Per mile for 166 mi.	Flat sum	Per mile for 166 mi.
If weighing 25,000 pounds unladen	$7.50	6¢	$5.00	4½¢

It is thus plainly obvious that if the charges applied to other similar classes are to be taken into consideration as evidence in determining the nature of the tax about which appellant complains, appellant is being undercharged and the amount is not enough to compensate the state for the road use extended.

These conclusions are reached without taking into consideration the ton mile charges and other obligations placed

on carriers for hire under the terms of Chapter 154. (Appendix L).

ANSWER TO APPELLANT'S CLAIM OF CONFLICT IN REASONING OF DISTRICT COURT.

At the bottom of page 29 and top of page 30 of his brief, appellant claims to have discovered an inconsistency in the reasoning of the District Court. Appellee is unable to follow appellant's argument. The fact that a mileage tax is provided for and can be imposed in addition to the caravan permit fee does not prove that such mileage tax can be easily collected from all persons engaged in caravaning automobiles. Under the provisions of Section 4, Chapter 136 (Appendix B) the driver of a vehicle passing through a port of entry is required to declare, among other things, the highway or highways he intends to use in the state and the place he intends to leave the state, but there is no provision in the act requiring him to check out at a port of entry on departure from the state. The difficulty of collecting a mileage tax under these circumstances is apparent. The distinction between this type of a mileage tax and the mileage tax required under Chapter 154 of the Session Laws of 1933 (Appendix M), where the motor carrier subject to the tax is required to be licensed, obtain a permit and furnish insurance and make monthly reports, and the ease of collection of such tax when compared with the mileage tax provided under Chapter 136, the port of entry tax, is apparent. (At this point we call attention to the fact that there is nothing in this case showing the mileage tax has been assessed or collected from the appellant.)

We therefore submit that there is no inconsistency in the expressions quoted in appellant's brief from the opinion of the trial court.

ALLOCATION OF MONEYS COLLECTED UNDER CHAPTER 56

This brings us to the consideration of the analysis attempted by the appellant of the allocation of the moneys collected under the provisions of Chapter 56, to which he

refers on page 14 of his brief, and again on page 30. Appellee takes exception to such analysis and submits the following as the true picture under the facts and the relevant statutes.

On page 14 of appellant's brief he sets out a table from which he deduces that "43.6 cents (out of each dollar collected from him under Chapter 56) are used for purposes in no way relating to the construction or maintenance of highways or to the policing thereof in the interest of public safety." This statement is erroneous on the face of appellant's tabulation alone. Thus the following amounts, which total 62.4 cents of each dollar collected as shown by appellant's computations on page 14 of his brief, are on the face of the statute allocating such proceeds, Chapter 93, (Appendix C) directly allocated to highway construction and maintenance and the policing thereof: Expense of administration $0.06, state road fund $0.423, county road fund $0.141. Appellant's error apparently lay in not including the county road fund figure in his computation.

Therefore, on the face of Chapter 93 (Appendix C) of every dollar exacted from appellant by the act of which he complains, only 37.6 cents appear to be allocated to purposes other than highway construction and maintenance and registration and control of motor vehicle traffic. *But of that 37.6 cents, practically all, if not entirely all, can be accounted for as going, directly or indirectly, to such purposes, as we now proceed to show.*

The agreed stipulation of facts, numbers 12 to 16 and 26 to 29, inclusive, (R. 45, 47) sets forth the amounts collected by the ports of entry between various dates. It also shows total expense of operating the ports of entry of the State of New Mexico under Chapter 136 (Appendix B). Without going into too much detail these stipulated facts show that from July 1, 1935, the date the ports of entry were established, to September 4, 1935, the total collections through the ports of entry amounted to $13,316.22, and that the total expense of operating the ports of entry from July 1, 1935 to August 31, 1935, was $7,052.68. In other words, more than fifty per cent of all fees and taxes collected at such ports under all laws was required to pay the operating expense of the ports of entry during that period.

While it does not appear in the record, the fact is that since all the ports of entry have been established the cost of operating them has approximated forty per cent of the license tax and fees collected through the ports of entry.

Under the provisions of the Port of Entry Act the net of the fees, taxes and licenses collected is distributed to the proper funds and departments. The cost and expense of operating the ports of entry are likewise proportionally charged against the various funds benefitted by the collections made through the ports of entry. (Sections 9 and 10, Chapter 136, Appendix B).

It follows therefrom that upon the stipulated facts fifty per cent of the charges exacted from the appellant is used to defray the cost and expense of administering the Port of Entry law, and the appellant certainly can not be heard to say that this is not a proper allocation of the proceeds of the fees of which he complains.

It is therefore plainly evident that half of the above computed amount of 37.6 cents per dollar is devoted to the expense of administering the Port of Entry law (Appendix B), which is a fundamental highway traffic control law.

We proceed further. Referring again to appellant's table on page 14 of his brief, and to the figure set out therein as "State general fund $0.141", we desire to point out that such amount is devoted to the construction, repair and policing of the highways. What happens is that it reimburses the state general fund for a part of the amount expended therefrom for those purposes. Section 64-316, New Mexico Compiled Statutes, 1929 (Appendix D) provides for the levy of an annual ad valorem property tax of one and one-half mills upon all taxable property in the state for highway and bridge construction. The New Mexico State Police is maintained from general revenues of the state at an annual expense of $105,000 per year. See Stipulation of Fact XXXI (R. 48). The State Police, among other general law enforcement duties, patrol the highways including the highway used by appellant, and possibly twenty-five per cent of their time is consumed in handling and regulating caravan traffic. (R. 52).

Section 64-210, New Mexico Compiled Statutes, 1929, (Appendix E) provides for a county ad valorem property

tax for county road and bridge purposes. See also Stipulation of Fact XXXV (R. 49).

Paragraph XXXIV, Stipulation of Facts (R. 49) shows that $68,000 of property taxes were received and expended by the State Highway Department for the fiscal year ending June 30, 1934, for road purposes.

It therefore clearly appears that the above described $0.141 allocated to the state general fund is only in the way of partial replacement or reimbursement of the amounts derived from general ad valorem property tax levies devoted to highway construction and maintenance.

At page 14 of his brief appellant states that 23.5 cents of each dollar is diverted to "School funds, county and district." With this we do not agree. Chapter 93 (Appendix C) provides that 25 per cent (appellant's figure 23.5 per cent) shall be paid over to the county treasurers of the respective counties of the state and distributed among said respective counties in the proportion that the total amount of the registration fees paid for vehicles owned in each county bears to the total amount of such registration fees paid for vehicles owned in the state. The Act then directs the County Treasurers to distribute the money so paid, as follows: Between the county funds and school district funds of such county and the general funds of the cities, towns and villages therein, in the same proportion that the receipts from general property taxes, other than taxes for state purposes, are distributed between such county and school district funds and said cities, towns and villages therein. (Appendix C).

The net result is that counsel for the appellant appears to be entirely in error in his contention that 23.5% of each dollar collected is diverted to school purposes, that he is also in error when he says at page 30 that 42.3 cents of each dollar is all that is allocated to the administration, regulation, construction or maintenance of public state highways. In the first place 50 cents of each dollar is paid out to administer the port of entry act, and it is only the net which is allocated under the provisions of Chapter 93, Session Laws of 1935 (Appendix "C").

And it should be kept constantly in mind with reference to this small percentage of the funds allocated to counties

and other local taxing districts, that the county ad valorem tax for road use purposes heretofore referred to (Appendix "E") comes from the same districts and the same taxpayers which may receive the extremely small benefit of such funds.

After making all of the foregoing somewhat detailed explanation of the disposition of the proceeds of the fees of which appellant complains, it is to be remembered the best and full answer to appellant's contentions is the following. Chapter 56, the act in question, possesses, within itself and in the light of related statutes, all except one of the precise indicia which reveal an exaction for the purpose of traffic regulation and for the privilege of conducting a business upon the state's highways. (The only one of such indicia it can be said to lack is the feature that it does not vary precisely with the mileage travelled, but this has been declared to be of no importance in four of the cases of this Court which we have discussed above). The indicia it possesses we have also discussed at length in Part II hereof. One of these indicia is that all of it except an almost infinitesimal part is devoted to highway construction and maintenance and traffic regulation. With this index so present, and as it likewise possesses all of the other commonly considered indicia, we submit that the act cannot be held to be invalid as to interstate operators.

III.

APPELLEE'S ANSWER TO APPELLANT'S POINT III.

In his Point III appellant urges that Chapter 56 is unconstitutional, because repugnant to the "equal protection of the laws" clause of the Fourteenth Amendment.

From page 32 to the top of page 35, he repeats and argues at greater length his claim as made on page 20, that the classification of "caravaning" is improper and discriminatory. To answer this, we refer the Court to our argument commencing with our Point II. To avoid carrying this brief to undue length, we do not repeat in full our previous argument here. We summarize it by saying that

the description of the class as confined to the movement of motor vehicles on their own wheels, for the purpose of selling or offering same for sale, includes the entire class of integrated fleet movements of motor vehicles over the highways of the state, and none other, and that no similar movement, not included within the definition of the class, exists. We again call the Court's attention to the first sentence at the top of page 34 of appellant's brief, in which he admits that "a proper tax classification of vehicles moving in integrated groups or fleets might be proper." The difficulty appellant gets into by making that concession (which conclusion, of course, seems perfectly obvious), is that such integrated fleet movement is precisely the movement that is defined and included in the classification made by the act. See the cases cited in the first part of our Point II. As an additional reason to justify the classification, we refer the Court to our argument set forth under Point II at pages 14 to 17, that the two limitations of the class are reasonably valid and bear a direct relationship to the purpose of the tax, that is, the limitation of the class to motor vehicles being moved for purpose of sale segregates those using the highways for gain from those who use the roads for ordinary private purposes, and that the physical characteristics of the movement justify the further sub-division of the broad class of those who use the roads for gain.

Appellant, in criticizing the classification, cites the argument propounded in the dissenting opinion in the lower court to the effect that the difference in the tax rate between towing and towed vehicles encourages, rather than discourages, the movement of cars in tandem, because the rate applied to the towed vehicle is less than that which would be applicable if it were driven singly. If the only evil sought to be cured or regulated by the act were the movement of vehicles in tandem, this argument might have some force. However, attention is called to the fact that many other evils are the subject of regulation. The majority opinion indicated the danger resulting from disinterested, inexperienced drivers, the traffic hazards from the movement of vehicles in long processions or fleets, and the congestion resulting from parking such vehicles in groups when car trouble was incurred, and other factors.

The legislature, in dealing with the problem of caravaning, had before it a specific problem of legislation. Apparently it decided, in its own judgment, that the problems and evils of caravaning would be minimized to some extent if caravan cars were hooked together in tandem. The judgment of the legislature as to the precise details of the legislation by which the caravaning problem was to be controlled or the measure of compensation to be paid by caravaners, that is, the inner details of the act, falls into the area wherein the judgment of the legislature is supreme and is not subject to review by the Courts. It is a familiar principle that the wisdom alone of a legislative plan of regulation is not a question for judicial review.

Carley & Hamilton vs. Snook, 281 U. S. 66.

It is only logical to conclude that the legislature thought that the separation of each of the hook-ups and the provisions of drivers for each car would merely tend to augment the number of inexperienced and irresponsible drivers, to increase, to some degree, the spacing between the respective cars in the procession and thus elongate the same, increasing the hazards as the result of procession movements.

THE STATUTE IS BOTH A POLICE AND REGULATORY MEASURE AND A MEASURE TO EXACT COMPENSATION FOR USE OF THE STATE HIGHWAYS.

Appellant contends that paragraph (d) of Section 1 of Chapter 56, is not a police or regulatory measure and endeavors to support such contention by claiming that the statute does not contain within itself specific police or regulatory requirements. It is a familiar rule that a statute need not depend for its constitutionality upon the provisions contained within the four corners of the act. *Gregg Dyeing Co. vs. Query*, 286 U. S. 472. A mere reading of paragraph (d) of Section 1, Chapter 56, shows that the act does, within its four corners, contain certain regulatory features, to-wit, registration and the carrying of placards for purposes of identification; and a casual reading of the

general regulatory statutes of the state discloses numerous other traffic regulations to which caravaners are amenable, such as general traffic and safety laws. The record shows (testimony of the witness Gonzales) the need for special attention to those engaged in caravaning in order to enforce such general traffic regulations. The tax is obviously an attempt to secure some restitution for the special expense incurred by the state in the enforcement of ordinary traffic regulations against the business of caravaning.

Appellant then contends that the classification is unrelated to the objects of the statute. The classification is clearly identified with the objects of the statute and in support of our contention in this respect, we refer to our arguments under Point II.

SPECIFIC PROVISIONS OF PARAGRAPH (D), SECTION 1, CHAPTER 56, ARE NOT DISCRIMINATORY.

Appellant first contends under this sub-heading of his brief (page 37), that the exemption of motor vehicles licensed by the state of New Mexico, in itself, constitutes an unlawful discrimination against caravaners engaged in interstate commerce. His argument is that because automobiles having regular New Mexico license plates, and which are transported upon the highways thereof for the purpose of sale, are not subject to the caravan fees which he attacks, he is thereby discriminated against.

The complete answer to this contention is that under the provisions of paragraph (d), Section 1, Chapter 56, the non-resident caravaner is given the absolute optional right to take out a license under the general registration statutes of the state, or in the alternative, to pay the caravan fees and obtain a special permit. In face of this, there is and can be no discrimination.

NO QUESTION OF DISCRIMINATION BETWEEN RESIDENTS AND NON-RESIDENTS CAN ARISE IN THIS CASE, BECAUSE A DEALER IN MOTOR VEHICLES RESIDENT IN NEW MEXICO AND HAVING A DEALER'S LICENSE AS PROVIDED IN SECTION 11-330, 1929 COMPILATION, MUST, IF HE DESIRES TO OPERATE AS DESCRIBED IN APPELLANT'S COMPLAINT, PAY THE SAME LICENSE FEES OF WHICH APPELLANT COMPLAINS.

In sub-paragraph (b) of Paragraph IX of appellant's complaint, appellant charges that the Act in question discriminates against him in that it "applies only to out-of-state dealers and does not apply to local automobile dealers." Appellant misapprehends the statutory law on this point. The law of which appellant complains applies to residents and non-residents alike; it applies alike to automobile dealers licensed as such by the state of New Mexico and to automobile dealers such as appellant. The point is that Chapter 56 does not confer upon holders of automobile dealers' licenses any other or different privileges than those which they had prior to the passage of such Act, and prior to such Act the holder of an automobile dealer's license had no right to "caravan" as described in appellant's complaint.

Prior to the passage of Chapter 56, dealers in motor vehicles could obtain dealers' license plates under the provisions of Section 11-330, 1929 Compilation (Appendix I). Licenses and plates obtained under this section authorized dealers to operate "*any such vehicle upon any highway for purposes of demonstration only, and not for private use or hire.*" The plates could be transferred from one vehicle to another. Section 11-330 provided, in part, "The annual registration fee to be paid by such dealers shall be $50.00 which shall entitle him to one pair of plates and he shall be required to pay $10.00 for each pair of extra plates he may use."

Now it is obvious that such section gave dealers no right to "caravan"; that is, to move vehicles across the highways of New Mexico for the purpose of transporting them to the place where they were to be sold. That section gave them the right to operate "*for purposes of demonstration only*". *Oden Buick Co., Inc., v. Roehl*, 36 N. M. 293; 13 Pac. (2d) 1093. What it means to "demonstrate" an automobile is, of course, familiar to all. It is a part of the art of selling a car to an actual prospective customer present in person. See copy of opinion of Attorney General rendered September 6, 1935, wherein the Attorney General construes the provisions of Chapter 56 at the request of the officials of the State of New Mexico charged with the administration of the Act. (R. 28-30).

It should further be clearly understood that prior to passage of Chapter 56 no one, a resident or otherwise, a dealer or otherwise, could "caravan" without paying the regular license fees required for motor vehicles in general. This is the plain statutory law on the subject and appellant can point to no statute which would give him, or anyone else, the right to "caravan" prior to the passage of Chapter 56 without paying the full general license fee for each vehicle.

The question then arises: What effect does Chapter 56 have upon said Section 11-330 (Appendix I)? The part of Chapter 56 involved at this point is the following:

> "(d) No person, firm or corporation shall use the highways of the State of New Mexico for the transportation of any motor vehicle on its own wheels for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser whether such agent, dealer, purchaser or prospective purchaser be located within or without this state, unless such motor vehicle either:
>
> 1. Is licensed by the State of New Mexico; or
> 2. Is owned by an automobile dealer, duly licensed by the State of New Mexico and is operated under a dealer's license duly issued to such dealer."

Sub-paragraph 3, following the above, is the part which is specifically attacked by appellant and provides for the special permits of which he complains.

It will be observed that that part of paragraph (d) which is above set out and which is prior to sub-paragraph 1 is negative and prohibitory.

The question, then, is whether Chapter 56, and particularly paragraph (d) thereof, has repealed by implication that part of Section 11-330 which limited the use of dealer's license plates to *demonstration only*. It is submitted that it has not. (Obviously there is no express repeal.)

It is axiomatic that repeal by implication is not favored; that it arises only where two statutes are, in whole or in part, irreconcilable; that it is the duty of the Court, if

possible, to give effect to both statutes. Cases on these points have been heretofore discussed.

An examination of paragraph (d) and sub-paragraph 2 thereof will disclose that all sub-paragraph 2 accomplishes is to save for dealers the rights they already had to *demonstrate only* by virtue of Section 11-330. Were sub-paragraph 2 not included in paragraph (d), then, clearly, paragraph (d) would repeal by implication the demonstration privileges conferred by dealers' license plates. But sub-paragraph 2 being included in the Act, the previously existing right to demonstrate by the use of dealers' plates was saved to dealers; but unless Section 11-330 has been repealed by implication by paragraph (d), dealers were given no additional rights by paragraph (d).

The right to demonstrate is included in the rights described in paragraph (d); that is, by its well known meaning in connection with motor vehicles "demonstrate" means "offering the same for sale", in the restricted sense that a prospective purchaser is actually present. Automobiles are, of course, offered for sale when placed in the dealer's show room, but no one would say that while they are sitting there unattended and without a prospective purchaser present, that they are being "demonstrated".

Paragraph (d) includes more extensive rights than demonstration; but it cannot be said that it shows an intention to confer upon holders of dealers' licenses rights other than those had under dealers' licenses previously. If is in the negative, prohibitory. If it had been couched in affirmative language to the effect that any person, firm or corporation may use the highways for the purposes therein described by qualifying as described in sub-paragraphs 1, 2 and 3, then there would be no question but that automobile dealers' license plates conferred the rights to "caravan" without more. But the negative form simply says that no person shall do a large number of things unless they are qualified. One of the things permitted by section (d) is a right already existing in the holders of dealers' license plates, and these rights are saved and not enlarged by the inclusion of sub-paragraph 2.

To say that paragraph (d) has given to holders of dealers' licenses plates the right to "caravan" is to say

that the legislature intended to add, at no increase in cost, the "caravaning" privilege to the demonstration privilege.

The legislature, in including sub-paragraph 2 in paragraph (d), cannot be said to have had any other intention than to have made it "cumulative" of the right already existing; that the legislature intended sub-paragraph 2 to be (quoting from *Wood v. U. S.* 16 Peters, 342, 10 L. Ed. 987) "*in aid of the purposes of the old law even when some of the cases provided for may equally be within the reach of each.*" And, there is obviously not "*a manifest and total repugnancy in the provisions to lead to the conclusion that the latter laws abrogated, and were designed to abrogate the former.*"

Wood v. U. S. 16 Peters, 342
U. S. v. Lee Yen Tai, 185 U. S. 213
Graham v. Goodcell, 282 U. S. 409
[illegible]nick v. Brown, 286 U. S. 131

THE CONTEMPORANEOUS CONSTRUCTION PLACED ON THE STATUTE SUPPORTS APPELLEE'S CONTENTION AS TO ITS MEANING.

Appellant, at page 42, contends that while it does not appear in the record, he believes Appellee will not deny that after the effective date of Chapter 56 no attempt was made by Appellee to collect the tax required by subdivision (d) of Chapter 56 from local dealers. Appellee makes no such admission. Appellant from this contention then presumes to prove that the contemporaneous construction placed upon the statute by the officials of the state supports the view that New Mexico dealers are, by the terms of paragraph (d), Section 1 of Chapter 56, permitted to caravan without payment of any charge therefor. The record specifically shows the contrary to be the case. The opinion of the Attorney General upon this question was set out in full in respondent's return and answer to the bill of complaint, and appears in full at pages 28-30 of the transcript of the record.

COMPLETE ANSWER TO APPELLANT'S CHARGE OF DISCRIMINATION IN FAVOR OF RESIDENT AUTOMOBILE DEALERS, MADE IN HIS POINT III, IS THAT THERE IS NO EVIDENCE TO SHOW THAT RESIDENT DEALERS ACTUALLY ENGAGE IN CARAVANING.

Appellant claims that he is unlawfully discriminated against by Chapter 56, in that he, a non-resident of the state and a dealer in automobiles at Los Angeles, California, in moving his automobiles through the state in caravan, is required by paragraph (d), Section 1 of Chapter 56, to pay permit fees or license fees which are not required of a resident dealer engaged in caravaning.

One of the complete answers to this contention is that there is no evidence in the record that any automobile dealers resident in New Mexico do engage in the moving of automobiles over the highways of the state on their own wheels for the purpose of sale. It is a familiar principle of law that one who assails a statute as discriminatory must prove that the discrimination of which he complains does *in fact* exist.

In *Williams vs. Baltimore*, 289 U. S. 36, a state law was attacked as discriminatory because it exempted a certain insolvent railroad from taxation. The court said, at page 42:

> "We are told that the signs of an arbitrary preference are written on the statute because the exemption is confined to this particular insolvent when it might have been extended to all other insolvents engaged in a like business. There is nothing to show that any Maryland railroad, other than this one, was in the hands of a receiver. The assailants of the statute have the burden of proving everything essential to their case."

Also on this point see:

O'Gorman & Young vs. Hartford Fire Insurance Co. 282 U. S. 581.
Corporation Commission vs. Lowe, 281 U. S. 431
Sweet vs. Rechel, 159 U. S. 380.

Further answering Appellant's claim of discrimination:—

Reference to Section 11-330 (Appendix I) shows that New Mexico dealers pay certain fees not required of Appellants. There is no showing in the record that the resultant burden of the registration fees or caravan permit fees upon the appellant falls with an economic burden disproportionate to that upon the resident dealers. (See *Interstate Busses Corp. vs. Blodgett*, 276 U. S. 245.)

In addition to these fees the resident dealer is required to pay ad valorem property taxes on all cars carried by him upon the floor of his salesroom (Appendix M). See also case of *Oden Buick Sales vs. Roehl*, 36 N. M. 293, 13 Pac. (2nd), 1093.

IV.

APPELLANT IS NOT IN A POSITION TO URGE THE UNCONSTITUTIONALITY OF THE STATUTES IMPOSING THE FEES IN QUESTION.

Throughout this entire proceeding appellant has made no claim that any provision of the laws of the State of New Mexico other than Chapter 56 (Appendix A) is invalid or unconstitutional. No issue was joined in the trial of the cause as to the validity or constitutionality of any other provision and in this case, as it stands, the court is without power to hold any other provision invalid.

Although, at a number of places in his brief, appellant refers to Chapter 56, in fact, his entire argument is directed against only paragraph (d) of Section 1 of said Chapter 56. His entire attack is directed against the imposition of the special caravan fees provided in said Section (d).

Attention is called to the fact that Chapter 169 (Appendix J) lays down the general rule that all motor vehicles operated over the highways of the state must be registered in accordance with the terms of said Chapter. Chapter 56 contains certain exemptions which must be construed strictly against the one claiming the exemption. *Camas Stages v. Kozer*, supra.

The first three paragraphs of Section 1 of said Chapter 56, to-wit, (a), (b) and (c) deal with non-residents of the State. Paragraph (d) of the same section deals with the class therein described and refers to both residents and non-residents. Paragraph (a) provides, for a non-resident owner, certain exemptions "unless otherwise provided in this section." Paragraph (d) is in the same section. Paragraph (a) extends exemption from registration to a certain broad class of non-resident owners. Paragraph (b) of the same section is a limitation on the exemption contained in paragraph (a) and by its terms specifically deletes from the exempted class all those non-resident motor vehicle owners engaged in the "transportation of merchandise". At no point in this proceeding has appellant attacked the classification of those engaged in the transportation of merchandise, nor has appellant with any definiteness assailed the right of the State of New Mexico to exact from all motor vehicle users, including non-resident owners, the regular license plate registration fees imposed by Chapter 169. Paragraph (d) of Section 1 of said Chapter 56 is a further limitation of the exemption from registration set forth in paragraph (a) of the same section, and must be read in conjunction with the limitation contained in said paragraph (b). Paragraph (d) gives appellant the right, in the alternative, to pay either the registration fee imposed under the terms of Chapter 169, referred to and limited under the provisions of said paragraph (b) of Section 1 of Chapter 56, or the special caravan permit fee provided in sub-paragraph 3 of said paragraph (d). A comparison of the amounts exacted as license fees and the amounts provided as special caravan permit fees discloses the fact that in some cases, dependent upon the circumstances and time of year when application is made, the registration fees are lower than the caravan permit fees.

Common sense gives force to the conclusive presumption that appellant would pay whichever charge is the lower, dependent upon the facts and circumstances. The same persuasive reasoning leads to the conclusion that appellant is not, by law, compelled to pay any caravan permit fee unless it is lower than the registration fee.

By the terms of said paragraph (d) appellant is, therefore, placed in a preferred position. By striking all of paragraph (d) of Section 1 of said Chapter 56 paragraph (b) would still remain. Appellant has made no attack upon paragraph (b) of the same section, although he has, on some occasions, referred to the invalidity of Chapter 56. He has advanced no reason or arugment for the invalidity of any portion of Chapter 56 other than paragraph (d) of the same chapter. Certainly appellant has at no point in the entire proceeding challenged the provisions of Chapter 169, under the terms of which the obligation to pay the registration fee is imposed. If all of paragraph (d) were stricken paragraph (b) would still remain. Even if all of Chapter 56 were held invalid Chapter 169 would still remain. No provision of any of the challenged portions of the law imposes any burden upon appellant any greater than that imposed by Chapter 169. Appellant, being in a preferred class, is not in a position to challenge the preference to his class. If paragraph (d) or indeed all of Chapter 56 should be found by the court to be void as applied to appellant, and if harm is done by the provisions of said paragraph (d) or Chapter 56 in its entirety, it is not done to the appellant and he cannot complain.

V.

APPELLEE'S ANSWER TO APPELLANT'S POINTS IV, V AND VI.

Under Point IV appellant contends that the District Court erred in overruling appellant's objections to admission in evidence of facts set out in the Stipulation of Facts

The only objection made to these specific facts is that they were not material to the issues.

A sufficient answer to this contention is that there is nothing in the record to show (admitting for the sake of the argument that some or all of the challenged facts were immaterial) that the trial court was in any way influenced by such facts in arriving at its ultimate holding in this case.

Under Point V the Appellant contends that the District Court erred in making its Findings of Fact, Numbers 2, 3, 4, and 5, over Appellant's written objections.

The answer to this argument requires an examination of the evidence in the case, which includes both the stipulated facts and the oral testimony of the witness Gonzales. Without going into detail we submit that Findings of Fact Numbers 2, 3, 4, and 5, are all amply supported by substantial evidence.

Under Point VI Appellant contends that the District Court erred in entering its decree upon the insufficient findings of fact made by it.

We understand the recognized practice of the Federal Court to be that on assignment of error to the effect "The District Court Erred in Entering Its Said Decree Upon the Insufficient Findings of Fact Made by It in This Cause." presents no question for review.

CONCLUSION

Wherefore appellee submits that there is no error shown in the record and that the judgment and decree of the District Court dismissing the case and assessing damages should be affirmed.

Respectfully submitted,

FRANK H. PATTON,
Attorney General for the
State of New Mexico.

QUINCY D. ADAMS,
Assistant Attorney General
for the State of New
Mexico,
Santa Fe, New Mexico.

Of Counsel
E. R. WRIGHT,
Santa Fe, N. M.

AMOS M. MATHEWS,
Sioux City, Iowa

APPENDIX "A"

CHAPTER 56, LAWS OF 1935

AN ACT TO AMEND CHAPTER 139 OF THE SESSION LAWS OF 1933 RELATING TO REGISTRATION FEES FOR MOTOR VEHICLES.

House Bill No. 71; Approved February 21, 1935.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. That Chapter 139 of the Session Laws of 1933, be and the same is hereby amended to read as follows:

"11-321. Registration by non-residents.

"(a) A non-resident owner, except as otherwise provided in this section, owning any foreign vehicle which has been duly registered for the current calendar year in the state, county or other place for which the owner is a resident and which at all times when operated in this state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operation of such vehicle within this state without registering such vehicles or paying any fees to this state, during a period of three months from the time such vehicle is first brought into this state.

"(b) A non-resident owner of a foreign vehicle operated within this state for the transportation of persons or property for compensation or for the transportation of merchandise, shall register such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state; Provided, however, that motor vehicles properly licensed in any other state or country, operated for compensation or hire, which are used exclusively in the transportation of livestock, lumber, farm or dairy products, from the place of production to market, or in the transportation of a return load of livestock, farm or dairy products or lumber, may be allowed to make trips within the state and remain on each trip within the state

not exceeding four days, without being registered or required to pay the mileage or other fees, in this state, in the event that under the laws of such other state or country, similar or like exceptions are granted to motor vehicles registered under the laws of and owned by residents of this state.

"(c) Every non-resident, including any foreign corporation carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer or semi-trailer within this state, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state Provided, however, salesmen, agents or representatives with no permanent place of business in this state and who are traveling through the State for the purpose of calling on retailers, wholesalers or jobbers for the purpose of taking orders for future delivery, shall be required to register any motor vehicle used by them in such business and pay therefor a registration fee of Five ($5.00) Dollars, for which an appropriate license tax shall be furnished by the motor vehicle commissioner.

"(d) No person, firm or corporation shall use the highways of the State of New Mexico for the transportation of any motor vehicle on its own wheels for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser whether such agent, dealer, purchaser or prospective purchaser be located within or without this state, unless such motor vehicle either:

1. Is licensed by the State of New Mexico; or
2. Is owned by an automobile dealer, duly licensed by the State of New Mexico and is operated under a dealer's license duly issued to such dealer; or
3. A special permit for the use of the highways of this state for the transportation of such vehicle, in the manner in which the same is being transported, has first been obtained and the fee therefor has been paid as hereinafter specified.

Special permits for the use of said highways in the transportation of such vehicles shall be issued by the Com-

missioner of revenue of the State of New Mexico upon application on such form as said Commissioner may prescribe and upon payment of a fee of $7.50 for each such vehicle transported by use of its own power and a fee of $5.00 for each such vehicle towed or drawn by another vehicle and not transported in whole or in part by the use of its own power. All permits so issued shall be evidenced by certificates, issued by said Commissioner, which shall show upon the face thereof the registration number assigned to each such vehicle, the name and address of the owner thereof, the manner of transportation thereby authorized and a description of the vehicle so registered including the engine number thereof. Such certificate shall be carried at all times by the person in charge of such vehicle or vehicles. A suitable tag or placard shall be issued by the Commission with such certificate and shall be at all times displayed on each such vehicle whether the same is being so transported singly or in a caravan. No such permit, certificate, tag or placard shall be used upon or in connection with the transportation of any vehicle other than the one for which the same is issued."

Section 2. That it is necessary for the preservation of the public peace, health and safety of the inhabitants of the State of New Mexico that this Act shall become effective at the earliest possible time, and therefore an emergency is hereby declared to exist, and this Act shall take effect and be in full force and effect from and after its passage and approval.

APPENDIX "B"

CHAPTER 136, LAWS OF 1935

AN ACT TO CREATE PORTS OF ENTRY TO AID IN THE REGULATION OF THE USE OF THE PUBLIC HIGHWAYS OF THIS STATE BY MOTOR VEHICLES, AND TO AID IN THE COLLECTION OF TAXES AND THE ENFORCEMENT OF STATE AND FEDERAL POLICE AND HEALTH LAWS; CREATING A PORT OF ENTRY BOARD; DEFINING THE POWERS AND DUTIES OF SAID PORT OF ENTRY BOARD AND THE RIGHTS AND DUTIES OF OWNERS AND OPERATORS OF MOTOR VEHICLES; IMPOSING MILEAGE TAXES; PROVIDING PENALTIES FOR THE VIOLATION HEREOF, AND REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH.

Senate Committee Substitute for Senate Bill No. 78; Approved February 28, 1935.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. In order to facilitate the enforcement of the laws of this State concerning "motor vehicles", "common motor carriers of property", "common motor carriers of passengers", "contract motor carriers of property", and "contract motor carriers of passengers", upon the "public highways" of this State, as each of said terms is defined by Chapter 154, New Mexico Session Laws of 1933, and to promote the safety and welfare of the public, the preservation and maintenance of the public highways, and the integrity of the regulation of motor carriers, and to more efficiently enforce the payment of registration fees, licenses, mileage taxes, and other charges imposed by law upon motor carriers of passengers for hire and for the transportation of property, and to aid in the collection of other taxes and the enforcement of other laws, it is hereby declared necessary to provide for the establishment of registration stations or ports of entry into the

State of New Mexico upon certain main highways entering the state, through which every motor carrier of passengers for hire or for the transportation of property shall enter the state, register, be inspected, and secure permission and authority to proceed into or across the State upon its public highways.

Section 2. There is hereby created a board, to be known as the "Port of Entry Board", which shall be composed of the State Highway Engineer, a corporation commissioner to be selected by the Corporation Commission, and the Commissioner of Revenue, of the State of New Mexico. Said Board is invested with power to make all needful rules and regulations to secure proper and efficient enforcement of this Act and other laws of the State of New Mexico not inconsistent with or in derogation of the powers, duties, and responsibilities placed by existing statutes upon the Corporation Commission, the State Highway Department, the Commissioner of Revenue or any other State authority, but supplementary thereto and in aid thereof. It is declared necessary for all such State Departments and Officials to cooperate and co-ordinate their actions and efforts for the proper and efficient enforcement of this Act. If any such official or department shall feel aggrieved at any order, rule, or regulation promulgated by the Port of Entry Board and shall desire to resist the same, he or it shall, within five days after its promulgation by the Port of Entry Board, serve written notice upon the chairman of said Board that he or it appeals from said order, rule or regulation, to the Governor, and the Port of Entry Board shall forthwith certify to the Governor the order, rule or regulation so appealed from and the Governor shall fix a time and place for a hearing thereon. The Port of Entry Board shall cause all interested parties to be notified of the time and place of such hearing, and at said hearing all persons interested shall be given opportunity to be fully heard, and the Governor shall thereupon decide such appeal, and his decision shall be final, conclusive and binding upon each of said departments and all persons concerned.

Section 3. The Port of Entry Board shall designate a sufficient number of the main highways entering this

State to reasonably meet the needs and requirements of persons operating motor vehicles for the transportation of passengers for hire and for the transportation of property who enter this State from points beyond its boundaries, and shall establish on each of said designated highways a registration office or port of entry where inspection and registration service shall be maintained. The Port of Entry Board is hereby authorized and empowered to appoint such deputies, agents and employees as it deems necessary properly to conduct and manage the affairs of such registration offices, and to give service at such registration offices and ports of entry reasonably necessary to meet the needs and requirements of all persons required to register and receive inspection thereat.

The Commissioner of Revenue may in his discretion deputize persons in charge of or employed at ports of entry to act as his agents in the collection of all fees and taxes required by law to be collected by the Bureau of Revenue, and such persons in charge of or employed at ports of entry shall, while engaged in the performance of their duties in enforcing this act and collecting the fees, licenses and taxes required to be collected by the terms of this act, be considered and held to be the deputies and agents of the departments or official charged with the collection of the same.

Section 4. Every motor carrier who shall transport into this state any property, or who shall transport into this state any passengers for hire, by means of the public highways of this state must enter the state on a highway designated as heretofore provided, and shall without delay stop at the registration office or port of entry established on such highway and register, and submit to inspection. The driver of the motor vehicle shall immediately make out and deliver to the inspector at such port of entry a card showing the name of the owner of the vehicle, the name of the operator, or driver, the name of the forwarding or other company in whose service said vehicle is licensed, the license number, the state in which said vehicle has been granted a common or contract motor carrier permit, if any, and number of such permit, the motor number, and the serial number of the vehicle, and a description of such

vehicle, whether automobile, truck, trailer, semi-trailer, tractor, motor bus or other type of motor-driven vehicle, the point or origin of the shipment, the ultimate destination of the shipment, the gross weight of vehicle and cargo, and the factory list capacity or the actual capacity if rebuilt, the number of taxable miles to be traveled within the state and the nature, amount and coverage of all public liability or other insurance carried upon said vehicle and upon the cargo thereon. The driver of said vehicle shall likewise declare upon said registration card, the name and number of the highway or highways which he intends to use within the State and the place where he intends to leave the State. Said card shall be signed by the operator or driver and filed with the person in charge of said registration station. The driver or operator of said vehicle shall likewise deposit with the person in charge of said registration station or port of entry a full, true and correct copy of his manifest, which shall show the precise nature and character of the cargo and the weight thereof, and shall be certified as a true and correct copy of the original manifest by the issuer thereof.

The person in charge of such registration station or port of entry shall verify the information contained upon said card and manifest, and shall check the license, permit, motor and serial numbers, weight and description of the vehicle. Such person shall likewise inspect said vehicle and ascertain whether the same is in safe and roadworthy condition, properly equipped with all lights, brakes and other appliances required by any statute of this state, in such condition as to be safe for operation upon the public highways of this state.

The person in charge of said port of entry or registration station shall likewise satisfy himself as to the nature and character of the cargo, of the weight thereof, and is authorized to do any and all things necessary to obtain full and complete information in respect thereto, and if in doubt as to the declared weight may order the same weighed before issuing any clearance certificate for such motor vehicle.

The person in charge of said port of entry or registration station shall further inspect the contents of such

vehicle to determine whether or not all taxes on gasoline and motor fuel, and excise taxes on alcoholic liquors, and all taxes on any other property have been fully paid.

The person in charge of the said port of entry or registration station shall further inspect such vehicle and its contents to determine whether or not all laws and all rules and regulations of the Departments of this State with respect to public safety, health, welfare and comfort have been fully complied with.

The person in charge of such port of entry or registration station shall further require from the driver or drivers of such vehicles a showing, in such form and in accordance with such rules as may be established by the Port of Entry Board, that the driving of such vehicles within this state shall not be in violation of the provisions of Chapter 61 of the Session Laws of 1933, relating to the hours of service of drivers and chauffeurs.

Section 5. No motor vehicle transporting passengers for hire or transporting property shall be allowed to proceed from a port of entry into the State of New Mexico upon the highways thereof until and unless it has been duly registered and inspected at such point of entry or registration office and a clearance certificate issued therefor.

Section 6. After such registration and inspection clearance certificates or special permits shall be issued for:

(a) Motor vehicles operating in compliance with the provisions of Chapter 154 of the New Mexico Session Laws of 1933 and acts amendatory thereof when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid, and all other laws and rules and regulations of departments of this state applicable to such contents have been complied with; and

(2) Such motor vehicles have been found by the inspector in charge of such port of entry or registration station to be in a safe and roadworthy condition, duly and properly equipped with all lights, brakes and other equipment and appliances required by the laws of this state, in the interest of the safety and convenience of the public; and

(3) The operator or owner of such motor vehicle is not in default or delinquent in the payment of any tax,

the filing of any report or the observance of any requirement of said Chapter 154 of the Session Laws of 1933; and

(4) When proper showing is made by the driver or drivers in such form and in accordance with such rules as may be established by the Port of Entry Board, that the driving of such vehicles within this state shall not be in violation of the provision of Chapter 61 of the Session Laws of 1933, relating to the hours of service of drivers and chauffeurs.

(b) Motor vehicles classified and designated in Chapter 154 of the Session Laws of 1933 as exempt from the provisions of that act when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to such contents have been complied with; and

(2) Such motor vehicles have been found by the inspector in charge of such port of entry or registration station to be in a safe and roadworthy condition, duly and properly equipped with all lights, brakes and other equipment and appliances required by the laws of this state, in the interest of the safety and convenience of the public; and

(3) Such vehicles have been duly licensed and are displaying such license tag or tags as are required by the laws of this state.

(c) Motor vehicles transporting property not for hire when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid and all other laws, and rules and regulations of departments of this state applicable to such contents have been complied with, and

(2) Such motor vehicles have been found by the inspector in charge of such port of entry or registration station to be in a safe and roadworthy condition, duly and properly equipped with all lights, brakes and other equipment and appliances required by the laws of this state, in the interest of the safety and convenience of the public; and

(3) Such vehicles have been duly licensed and are

displaying such license tax or tags as are required by the laws of this state; and

(d) Motor vehicles not registered or licensed in this state but which are transporting passengers or property for hire when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid and all other laws, and rules and regulations of departments of this state applicable to such contents have been complied with; and

(2) Such motor vehicles have been found by the inspector in charge of such port of entry or registration station to be in a safe and roadworthy condition, duly and properly equipped with all lights, brakes and other equipment and appliances required by the laws of this state, in the interest of the safety and convenience of the public; and

(3) Said vehicles shall be properly covered by liability insurance issued in some insurance company or association authorized to transact business in the state of New Mexico, with coverage for its operation within the State of New Mexico of not less than $7,500.00 for any one person, or less than $10,000.00 for all persons who may sustain injuries or be damaged in any one contingency or accident covered by such policy; and

(4) When proper showing is made by the driver or drivers of such motor vehicles, in such form and in accordance with such rules as may be established by the Port of Entry Board, that the driving of such vehicles within this State shall not be in violation of the provisions of Chapter 61 of the Session Laws of 1933, relating to the hours of service of drivers and chauffeurs; and

(5) When the mileage tax in Section 8 set forth shall have been paid.

(e) Motor vehicles not registered or licensed in this state and which are transporting property not for hire when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid and all other laws, and rules and regulations of departments of this state applicable to such contents have been complied with; and

(2) Such motor vehicles have been found by the in-

spector in charge of such port of entry or registration station to be in a safe and roadworthy condition, duly and properly equipped with all lights, brakes and other equipment and appliances required by the laws of this state, in the interest of the safety and convenience of the public, and

(3) When the mileage tax in Section 8 set forth or the license fee in lieu thereof as in said section provided shall have been fully paid.

Section 7. Clearance certificates shall be issued to all motor vehicles described under subsection (a), (b), and (c) of Section 6; special permits accompanied by clearance certificates shall be issued to motor vehicles described under subsection (d) of Section 6; and a permit accompanied by a clearance certificate shall be issued to all motor vehicles described under subsection (e) of Section 6.

The clearance certificates issued for any such motor vehicle shall be of such distinctive color as may be prescribed by the Port of Entry Board and shall contain a large letter "C", when issued to vehicles described under subsections (a) and (c) of Section 6. To a motor vehicle described under subsection (b) the said clearance certificate shall be of a different distinctive color to be prescribed by the Port of Entry Board, and shall contain a large letter "E" indicating that said motor vehicle is exempt. Special permits shall also be of some distinctive color and shall contain a large letter "S" indicating that the same is "Special."

The certificates of clearance and special permits shall show such data as the Port of Entry Board shall prescribe, but in any event the same shall include the serial and motor number of the vehicle together with the license or tag number of such vehicle, the date such certificate is issued, the port of entry at which such certificate issued and destination to which issued and the amount, if any, paid at the time of the issuance of such certificate or special permit.

Such certificates of clearance and special permits shall be in the form of stickers in such size and form as may be prescribed by the Port of Entry Board, so that they can be readily fastened to the windshield of the motor vehicle, and such certificates of clearance and special permits must

remain upon the windshild of the motor vehicle until the trip for which they have been issued has been completed.

The certificates of clearance and special permits provided for in this Act shall be valid only for the specific trip for which the same are issued.

Not more than two special permits shall be issued in any one calendar month to any one motor vehicle described in subsection (d) of Section 6 of this act.

Section 8. There is hereby levied and assessed against motor vehicles in subsection (d) of Section 6, for the administration of this act and for the maintenance, repair and reconstruction of the public highways a mileage tax which shall be computed as follows:

(1) Where the gross weight of vehicle and cargo does not exceed fifteen thousand (15,000) pounds, one and one-half (1½) cent per mile from point of entering the state to the point of destination or place of leaving the state;

(2) Where the gross weight of vehicle and cargo exceeds fifteen thousand (15,000) pounds, and does not exceed twenty-five (25,000) thousand pounds, two (2) cents per mile from the point of entering the state to the point of destination or place of leaving the state;

(3) Where the gross weight of vehicle and cargo exceeds twenty-five thousand (25,000) pounds, three cents per mile from point of entering the state to the point of destination or place of leaving the state;

provided, however, that the foregoing mileage tax shall not apply to motor vehicles properly licensed in another state or country, operated for compensation or hire, which are used exclusively in the transportation of livestock or any farm or dairy products from the place of production to market, or in the transportation of a return load, provided no charge for transportation is made therefor.

There is hereby levied and assessed against motor vehicles described in subsection (e) of Section 6, for the administration of this act and for the maintenance, repair

and reconstruction of the public highways, a mileage tax, which shall be computed as follows:

(1) Where the gross weight of vehicle and cargo does not exceed fifteen thousand (15,000) pounds, one and one half (1½) cent per mile from point of entering the state to the point of destination or place of leaving the state;

(2) Where the gross weight of vehicle and cargo exceeds fifteen thousand (15,000) pounds, and does not exceed twenty-five thousand (25,000) pounds two (2) cents per mile from the point of entering the state to the point of destination or place of leaving the state;

(3) Where the gross weight of vehicle and cargo exceeds twenty-five thousand (25,000) pounds, three cents per mile from point of entering the the state to the point of destination or place of leaving the state;

In the event the owner or operator of any motor vehicle described in subsection (e) of Section 6 shall elect to register such vehicle with the Bureau of Revenue and pay the fees required for license plates for said vehicle, then and in such event the owner or operator of such motor vehicle shall be exempt from the payment of said mileage tax.

Section 9. All moneys collected under the provisions of this act by any persons in charge of ports of entry shall forthwith be remitted to the Commissioner of Revenue and by him paid over to the State Treasurer to be by such Treasurer covered into the special suspense fund provided to defray the cost of administering this act.

Section 10. All costs of administration of this act shall be paid from the respective funds for which collections are made by said ports of entry. The proportion of such cost of administration to be born by each of such funds shall be in the same ratio that the collection for the account of each of such funds bears to the aggregate amount collected by such ports of entry for all such funds.

The Commissioner of Revenue for the purpose of carrying out the provisions of this act is hereby authorized

to create a special suspense fund, with the Treasurer of the State of New Mexico, in sufficient amount to pay the expenses of the administration of this act in conformity with the provisions of this act, from the funds benefited through the administration of this act. At the expiration of 6 months after the taking effect of this act, the Commissioner of Revenue shall estimate the amount of funds necessary to carry out the provisions of this act and shall keep an amount available at all times to meet the administrative requirements of the provisions of this act. Any surplus remaining in such special suspense fund shall forthwith be turned into the respective funds of the State of New Mexico to be distributed as provided by law.

At the end of each month the Commissioner of Revenue shall make an accounting of the funds received from the operation of the ports of entry and shall determine therefrom the proportionate charge to each fund.

Section 11. The Port of Entry Board may, in its discretion, enter into cooperative agreements with the authorities of adjoining states for the joint operation of Port of Entry facilities as provided by this act, and may enter into working agreements with the authorities of the United States Government for the use of the ports of entry facilities for the administration and enforcement of federal laws now in existence or which may hereinafter be enacted.

Section 12. The Governor shall designate one member of the Port of Entry Board to act as its chairman and one as its secretary and such board may call upon any of the departments cooperating under this act for such clerical help, secretaries, stenographers and other assistance as shall be necessary to the expeditious and efficient carrying out of its duties under this act.

Section 13. The term "Transportation of Property", as used in this act, shall not only include the transportation of property in or on a motor vehicle, but shall also be construed to include the driving or moving on the public highways of any motor vehicle either under its own power or by being pulled by another motor vehicle where said vehicle or vehicles are to be sold or offered for sale to or by any agent, dealer, purchaser or prospective purchaser.

Section 14. The driving of any motor vehicle into this

state for the purpose of transporting passengers for compensation, or transporting property, without the same being first registered and inspected at a registration station or port of entry, and without there being displayed upon the windshield thereof a clearance certificate is hereby prohibited and declared unlawful.

Section 15. Any violation of this act shall constitute a misdemeanor punishable by a fine not exceeding $100.00 or imprisonment not exceeding thirty days or by both such fine and imprisonment. The payment of any fine under the provisions of this act shall not relieve the offender from the payment of any fees or taxes provided by this act or any other applicable statute of the State of New Mexico or of any other of the provisions of this act, and the vehicle and cargo may be held by the State Corporation Commission, the State Highway Department, the Commissioner of Revenue or any other official authorized to make arrests under the laws of the state, until such fine, special permit fee and costs are paid, and the offending driver may be required by the court imposing such sentence to return to the port of entry through which he should have passed and there comply with all the provisions of this Act, with which he should have complied in the first place by the terms hereof. Prosecution for any such violation may be brought in any county in the state in which such driving takes place or in which the driver of such vehicle shall be apprehended.

Section 16. If any part, portion, clause, paragraph, sentence or section of this Act shall be declared unconstitutional by any court of competent jurisdiction, it is hereby declared that this Act would have been passed without such part, portion, clause, paragraph, sentence or section, and such judgment or decree shall not affect any other part, portion, clause, paragraph, sentence or section hereof.

Section 17. All acts or parts of acts in conflict herewith are hereby repealed.

APPENDIX "C"

CHAPTER 93, LAWS OF 1935

AN ACT AMENDING SECTION 11-331 OF NEW MEXICO STATUTES, ANNOTATED, 1929 COMPILATION AS AMENDED BY SECTION 6, CHAPTER 169 OF THE LAWS OF NEW MEXICO OF 1933 WHICH AMENDED SECTION 6, CHAPTER 77 OF THE LAWS OF NEW MEXICO OF 1931, RELATING TO THE DISPOSITION OF REGISTRATION FEES, COLLECTED UPON THE REGISTRATION OF MOTOR VEHICLES.

House Bill No. 17; Approved February 25, 1935.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. That Section 11-331 of the New Mexico Statutes, Annotated, 1929 Compilation, otherwise known and designated as Section 31 of Chapter 119 of the Laws of 1929 as amended by Section 6 of Chapter 77 of the Laws of 1931 and as further amended by Section 6 of Chapter 169 of the Laws of 1933, be and the same is hereby amended to read as follows:

11-331. Disposition of Fees.

The fees collected under the provisions of this Act shall be paid over to the state treasurer not later than the close of the second business day after their receipt. *Not to exceed* Six per cent thereof shall be covered into the state comptroller motor vehicle fund, and used to defray the expense of the administration and enforcement of this Act and the discharge of such other duties as may be imposed by the state treasurer on or before the tenth day of the month next after their receipt, as follows:

Forty-five per cent thereof shall be placed to the credit of the state road fund to be used and disbursed as other moneys in the state road fund.

Fifteen per cent thereof shall be paid to the county treasurers of the several counties in this state and distributed between the respective counties in proportion that the

total amount of registration fees paid for motor vehicles each county bears to the total amount of such registration fees paid for such vehicles owned in the state, to be credited to the county road fund of said respective counties, and used for the improvement and maintenance of the public roads therein, and to pay for the acquisition of rights of way and material pits at the request of and by agreement with the state highway commission.

Fifteen per cent thereof shall be credited to the state general fund.

Twenty-five per cent thereof shall be paid over to the county treasurer of the several counties of this state and distributed between said respective counties in the proportion that the total amount of registration fees paid for vehicles owned in each county bears to the total amount of such registration fees paid for vehicles owned in the state, and the county treasurer of each county shall distribute the moneys paid to him under the provisions of this paragraph, when received, between the county and school district funds of such county and the various cities, towns and villages therein, in the same proportion that the receipts from general property taxes, other than taxes for state purposes, received by said treasurer for the year in which such distribution is to be made, are so distributed in such county between said county and school district funds and said cities, towns and villages therein. PROVIDED that in the counties wherein are located cities, towns or villages incorporated, organized and operating under special act, the county treasurer of such county shall pay to the treasurers of said cities, towns or villages a proportionate amount of said money by him to be distributed in the proportion that the receipts from general property taxes in said cities, towns or villages, bear to the total receipts from general property taxes other than taxes for state purposes received by the county treasurers and the collectors of said cities, towns or villages in the year in which said distribution is to be made. And provided further that for the purpose of effecting an equitable distribution in said counties, the collectors of said cities, towns or villages operating under special act shall, on or before the first Monday in October, certify to the county treasurer

and to the state tax commission, the assessed valuation and the total tax rate in said cities, towns or villages for such year. The remainder thereof shall be credited to the State Public School Equalization Fund.

APPENDIX "D"

SECTION 64-316, 1929 COMPILATION
(Sec. 1, Ch. 154, Laws of 1919)

§64-316. Tax levy. That in order to provide funds for carrying out the provisions of this act, and for the survey, location, construction and improvement of highways and bridges, there is hereby levied upon all taxable property in the state an annual tax of one and one-half mills upon the dollar, which tax shall be in lieu of the tax authorized by section 2642 (64-332), New Mexico Statutes, Codification of 1915.

It is hereby made the duty of the state auditor to cause such levy to be certified to the board of county commissioners of each county in the state each year, and said tax shall be extended upon the assessment rolls, assessed, and collected at the times and in the manner provided by law for the extension upon assessment rolls, assessment and collection of other state taxes; and the proceeds thereof shall be paid over by the several county treasurers, without deduction of any percentage thereof to the state treasurer and covered into the state road fund. All of the net revenue derived from the licensing of motor vehicles under any law now in existence or that may hereafter be enacted, and all penalties that may be collected under any such law, shall also be paid over to the state treasurer and covered into the state road funds.

Subject to the provisions of section 4579 (109-205), New Mexico Statutes, Codification of 1915, after providing for interest and sinking fund upon state highway bonds authorized and issued in accordance with chapter 58 of the Session Laws of 1912 by setting aside sufficient funds therefor each year out of the proceeds of the said one mill tax levy or out of moneys received from sales of certificates or debentures issued in anticipation thereof, it shall be the

duty of the state treasurer to set aside from the moneys received from collection of the taxes and licenses pledged therefor sufficient funds to provide for the payment of the interest and principal of all certificates or debentures issued under the provisions of this act.

There shall next be reserved from the state road fund a sufficient sum annually based upon estimates by the state highway engineer, to cover all expenses of the commission, salaries of officers and employees, and to pay the state's portion of the cost of maintaining the system of state highways herein provided for. The balance of the moneys in the state road fund shall be used as the commission shall determine for co-operating with the United States Government or with the several counties or municipalities of the state or otherwise, in the discretion of the commission, for the construction, improvement, or maintenance of public highways and bridges.

There shall not be charged on account of administration and engineering expenses in excess of seven and one-half per cent of the estimated cost of any work of construction, repair or maintenance upon any state highway or bridge or for work upon which aid is provided.

The tax levies herein provided for shall be excepted from the limitations of chapter 54 of the Session Laws of 1915.

APPENDIX "E"

SECTION 64-210, 1929 COMPILATION
(Sec. 10, Ch. 135, Laws of 1921)

§64-210. Assessment and levy of tax for roads. The board of county commissioners of each county in this state shall at the time of levying other taxes for county purposes each year levy a tax of not less than one mill nor more than two mills on the dollar of the assessed valuation of all property, subject to taxation in the county sufficient to produce the total amount required for said annual budget, except such portion thereof, if any, as may be produced from bond issue, special levies or other sources, and such tax levies shall not be subject to the limitations in chapter

74 of the laws of 1915, of chapter 17 of the laws of 1919; Provided, however, that the total tax levies for county purposes excepting school tax levies, special levies on specific classes of property and levies for payment of the public debt and interest thereon, including the levies herein directed to be made shall not exceed five mills in any one year.

It shall be unlawful to transfer any moneys from the county road and bridge fund to any other county fund. The county treasurer shall be liable on his official bond for any such transfer or transfers.

APPENDIX "F"

SECTION 64-212, 1929 COMPILATION
(Sec. 12, Ch. 135, Laws of 1921)

§64-212. Maintenance of roads and bridges. All county roads and bridges shall be maintained at the expense of the respective counties. All roads, and bridges upon roads, that have been declared to be a state highway by acts of the legislature or resolutions of the State Highway Commission shall be maintained at the expense of the state; Provided, that whenever there shall not be sufficient funds available in the state road fund for maintenance of all state highway mileage in any county, the state highway commission shall certify to the board of county commissioners of such county, the section or sections of such highways which it is unable to maintain at state expense and the same shall thereafter be maintained at the expense of said county until such time as there may be state funds available to maintain same.

APPENDIX "G"

SECTION 11-309, 1929 COMPILATION
(Sec. 9, Ch. 119, Laws of 1929)

REGISTRATION OF MOTOR VEHICLES, TRAILERS AND SEMI-TRAILERS.

§11-309. Owner to secure registration. Every owner

of a motor vehicle, trailer or semi-trailer intended to be operated upon any highway in the state shall, before the same is operated, apply to the department for and obtain the registration thereof, except the owner of any vehicle which is exempted by section 10 (11-310) and 35 (11-335), excepting also, when an owner is permitted to operate a vehicle under the special provisions relating to lien holders, manufacturers, dealers and non-residents, contained in sections 19 (11-319), 21 (11-321) and 30 (11-330) of this act.

APPENDIX "H"

SECTION 11-319, 1929 COMPILATION
(Sec. 19, Ch. 119, Laws of 1929)

11-319. REGISTRATION BY MANUFACTURERS AND DEALERS.

(a) A manufacturer of or dealer in motor vehicles, trailers or semi-trailers, owning or operating any such vehicle upon any highway for purposes of demonstration, only, and not for private use or hire, in lieu of registering each such vehicle may obtain from the department upon application therefor upon the proper official form and payment of the fees required by law and attach to each such vehicle one or duplicate number plates, as required for different classes of vehicles by section 30 (11-330), which plate or set of plates shall each bear thereon a distinctive number, also the name of this state, which may be abbreviated, and the year for which issued, together with the word "dealer" or a distinguishing symbol indicating that such plate or plates are issued to a manufacturer or dealer, and any such plates so issued may, during the calendar year for which issued, be transferred from one such vehicle to another owned or operated by such manufacturer or dealer who shall keep a written record of the vehicles upon which such dealers' number plates are used and the time during which each set of plates is used on a particular vehicle, which record shall be open to inspection by any police officer or any officer or employee of the department.

* * * * * * * * *

APPENDIX "I"

SECTION 11-330, 1929 COMPILATION
(Sec. 30, Ch. 119, Laws of 1929)

11-330. DEALER'S DEMONSTRATION NUMBERS. A dealer in motor vehicles may, in lieu of registering each vehicle he may wish to demonstrate on any highway, apply for and secure a dealer's demonstration number, which he may use by attaching registration and number plates issued by the department to each vehicle so used for demonstration only, and not for hire or private use.

The annual registration fee to be paid by such dealer shall be $50.00, which shall entitle him to one pair of plates and he shall be required to pay $10.00 for each pair of extra plates he may use.

APPENDIX "J"

CHAPTER 169, LAWS OF 1933

* * * * * * * * *

Sec. 9. That Section 28, Chapter 119 of the Laws of 1929 otherwise known and designated as Section 11-328, New Mexico Statutes, Annotated, 1929 Compilation, as amended by Section 5 of Chapter 77 of the Laws of 1931 be and the same hereby is amended to read as follows:

11-328. FEES FOR REGISTRATION.

That the following registration fees shall be collected for the registration of all trailers, semi-trailers, and motor vehicles other than tractors, in this state for the year 1930 and for all years subsequent thereto, to-wit:

(a) For each motorcycle having not more than two wheels in contact with the ground, $3.00.

(b) For each motorcycle having three wheels in contact with the ground or having a side car, $4.00.

(c) For each motor vehicle other than motorcycles, trucks, taxicabs, busses, tractors and driverless cars:

(1) When same has not been registered in any state during at least one year prior to the year for which the vehicle is being registered: $18.00 plus $2.00 for each 100 pounds or major fraction thereof, weight of such vehicle in excess of 2400 pounds.

(2) When same has been registered in any state during at least one year prior to the year for which the vehicle is being registered: $15.00 plus $1.50 for each 100 pounds weight or major fraction thereof, weight of such vehicle in excess of 2400 pounds.

(3) When same has been registered in any state during at least two years prior to the year for which the vehicle is being registered: $12.00 plus $1.00 for each 100 pounds weight or major fraction thereof, weight of such vehicle in excess of 2400 pounds.

(4) When same has been registered in any state during at least three years prior to the year for which the vehicle is being registered: $7.00 plus $1.00 for each 100 pounds weight or major fraction thereof, weight of such vehicles in excess of 2400 pounds.

(5) When same has been registered in any state during at least four years prior to the year for which the vehicle is being registered: $5.00 plus $0.50 for each 100 pounds weight or major fraction thereof, weight of such vehicles in excess of 2400 pounds.

(d) For each trailer and semi-trailer, $5.00 plus $1.00 for each 100 pounds weight or fraction thereof in excess of 500 pounds: PROVIDED that this sub-section shall not apply to any non-resident owner who shall use any vehicle mentioned in this sub-section solely for transportation of farm produce purchased by such non-resident from the growers or producers thereof, and transported in such vehicle out of the state; and PROVIDED FURTHER, that this sub-section shall not apply to farmers or ranchers who transport to market only the produce, animals or fowls produced by them or who transport back to their farms or ranches supplies for use thereon in trailers of less than one-ton capacity drawn by an automobile or truck bearing a proper license.

(e) For each motor truck:

(1) When the same has not been registered in any

state during the last two years prior to the year for which same is being registered:

(a) If such truck weighs 1600 pounds or less, $18.00.

(b) If such truck weighs more than 1600 pounds and not more than 2400 pounds, $18.00 plus $1.00 for each 100 pounds or major fraction thereof in excess of 1600 pounds.

(c) If such truck weighs more than 2400 pounds, $26.00 plus $2.00 for each 100 pounds weight or major fraction thereof in excess of 2400 pounds.

(2) When the same has been registered in any state during the last two years prior to the year for which same is being registered:

(a) If such truck weighs 1600 pounds or less, $10.00.

(b) If such truck weighs more than 1600 pounds but not more than 2400 pounds, $10.00 plus $1.00 for each 100 pounds weight or major fraction thereof in excess of 1600 pounds.

(c) If such truck weighs more than 2400 pounds, $18.00 plus $1.50 for each 100 pounds weight or major fraction thereof in excess of 2400 pounds.

(f) For each taxicab, or driverless car:

(1) When such vehicle has not been registered in any state during at least two years prior to the year for which the same is being registered $18.00 plus $3.00 for each 100 pounds weight or major fraction thereof in excess of 1600 pounds.

(2) When such vehicle has been registered in any state during at least two years prior to the year for which the same is being registered $10.00 plus $2.00 for each 100 pounds weight or major fraction thereof in excess of 1600 pounds.

(g) For each bus, except as hereinafter specified, $50.00 plus $10.00 for each seat of the normal passenger seating capacity of such vehicle.

(h) For each bus, truck or trailer which is used exclusively for the transportation of persons or property as a common carrier, contract carrier, or private carrier within the meaning of the laws of this state taking special charges for the use of the public highways and which has been registered with the state corporation commission as such common carrier, contract carrier, or private carrier

under the provisions of such laws, a license shall be issued under the provisions of this Act upon payment of one-half of the fees otherwise applicable to such vehicles under the provisions thereof.

(i) All vehicles having solid rubber tires, 25 per cent in addition to the fees specified above.

(j) All vehicles, having solid tires of material other than rubber, 100 per cent in addition to the fees specified above.

APPENDIX "K"

SECTION 11-333, 1929 COMPILATION
(Sec. 33, Ch. 119, Laws of 1929)

11-333. REGISTRATION FEES FOR OPERATION FOR LESS THAN ONE YEAR. In all cases in which it is shown to the satisfaction of the officer collecting the registration fees that the vehicle sought to be registered has not been operated on the highways of this state prior to April first of the year in which such registration is applied for, the fees collected for registering such vehicle shall be fixed at three-fourths of the amounts hereinbefore specified; and if it be shown that such vehicle has not been so operated prior to July first of such year such fees shall be fixed at one-half of the amount specified in the preceding sections hereof; and if it be so shown that such vehicle has not been so operated prior to October first of such year, such fees shall be fixed at one-fourth of the amounts specified in the preceding sections hereof; and if it be shown that such vehicle has not been so operated prior to December first of such year the fees collected for registering such vehicle shall be fixed at the sum of two dollars.

APPENDIX "L"

CHAPTER 154, LAWS OF 1933

ARTICLE IV—BONDS AND INSURANCE

Section 35. Effective herewith, every motor carrier holding a certificate of Public Convenience and Necessity

issued by the Commission shall file with said Commission a Ticket Reclaim Bond in the amount of $500.00 assuring full and prompt payment to all other motor carriers holding such certificates, all monies due them for transportation sold over their lines by the carrier filing such bond. Upon failure of any such carrier to file such bond, he shall be cited to appear before the Commission to show cause why his certificate should not be cancelled for such failure. Effective with this Act no Certificate of Public Convenience and Necessity authorizing a motor passenger service shall be issued by said Commission unless the applicant for such Certificate shall have filed with said Commission such Ticket Reclaim Bond. In cases where it is shown to the satisfaction of the Commission that the amount of reclaim business between any motor carriers exceed $500.00 during any one month, the Commission will increase the amount of said Ticket Reclaim Bond to adequately cover such business.

Sec. 36. Effective herewith, every motor carrier holding a Certificate of Public Convenience and Necessity issued by the Commission in compliance with the provisions of this Act, shall file with said Commission a Collect on Delivery Bond in the amount of $500.00 assuring full and prompt payment to any shipper entrusting a collect on delivery shipment of goods to such motor truck operator of all monies due such shipper on such shipment, or a return within ten days of such shipment to such shipper in the event that such shipment is refused by the consignee of same, or in the event that such consignee cannot be located, it being understood that the shipper will pay the transportation charges on such shipment if it is refused or the consignee cannot be located. Upon failure of any such motor carrier to file such bond effective herewith, he shall be cited to appear before the Corporation Commission to show cause why his certificate should not be cancelled for such failure. No Certificate of Public Convenience and Necessity authorizing a motor freight service shall be issued by said Commission effective herewith unless the applicant for such certificate shall have filed such Collect on Delivery Bond.

Sec. 37. No certificate or license shall be issued by the Corporation Commission to any motor carrier until such

motor carrier shall have filed with said Commission and obtained its approval of either a surety bond or policy of insurance, issued by some company authorized to do such surety or insurance business in this State, guaranteeing the payments to the public of all losses and damages proximately caused by the negligence, malfeasance or wilful misconduct of such motor carrier, its servants or agents, in not less than the following amounts, to-wit:

For each motor propelled vehicle having a seating capacity of not more than twelve passengers . . . . . .

Minimum of $7,500 coverage for injury to any one person and $10,000 for any one accident.

For each motor propelled vehicle having a seating capacity of between thirteen and twenty passengers . . . . . .

Minimum of $7,500 coverage for injury to any one person, and $30,000 for any one accident.

For each motor propelled vehicle having a seating capacity of between twenty and thirty passengers . . . . . .

Minimum of $7,500 coverage for injury to any one person and $40,000 for any one accident.

For each motor propelled vehicle having a seating capacity in excess of thirty passengers . . . . . .

Minimum of $7,500 coverage for injury to any one person and $40,000 for any one accident

For each motor propelled vehicle operating for the transportation of property for compensation . . . . . .

Minimum of $7,500 coverage for injury to any one person and $10,000 for any one accident and a minimum of $750.00 for damages or loss to any property carried therein.

For each motor propelled vehicle used in transportation of persons or property for compensation to cover damage to property including baggage of passengers but excluding other property carried in such vehicle . . . . . .

Minimum of $1,000 coverage.

All such bonds or insurance policies shall provide a guarantee of payment of all loss or damage caused as aforesaid and shall remain in effect during insolvency of the bonded party. *Provided, however,* that the Commission may upon application made to the Commission, and upon terms and conditions to be prescribed by the Commission, permit any common motor carrier of passengers or property to carry its or their own insurance.

In addition to the above, applicant must file bond to be approved by the Commission in the amount of $1,000.00 which shall assure faithful performance of any contract or agreement of transportation negotiated or entered into by the licensee.

* * * * * * * * * * * * *

ARTICLE V—FEES AND TAXES

Sec. 39. In addition to the regular license fees and taxes imposed upon motor vehicles, there shall be assessed against and collected from every such carrier for the administration of this Act and for the maintenance, repair and reconstruction of the public highways a mileage tax which shall be computed as follows:

(a) For passenger service of any kind, including the transportation of the baggage of passengers carried in such vehicle, one eighth cent per mile for every mile traveled over the highways of this State by a vehicle of any such motor carrier having a seating capacity of seven passengers or less; one-fourth cent per mile for each such mile traveled by such a vehicle, having a seating capacity of from eight to twelve passengers; one-half cent per mile for each such mile traveled by such a vehicle having a seating capacity from thirteen to eighteen passengers; three-fourths cents per mile for each such mile traveled by such a vehicle having seating capacity of from nineteen to twenty-five passengers; and one cent per mile for each such mile traveled by such a vehicle having a seating capacity of over twenty-five passengers.

The seating capacity of each seat of such passenger vehicle, having a seating width of 32 inches or over, shall

be computed upon the basis of sixteen inches seat width per passenger.

When baggage of any kind is carried in a vehicle separate from that in which the owners thereof are carried as passengers such separate vehicle shall pay the same charge as is therein specified for freight and express service.

(b) For freight or express service of any kind, one-eighth cent per mile for each mile traveled over any highway in this State by any vehicle having a capacity of one and one-half tons or less; one-fourth cent per mile for each mile so traveled by any vehicle having a capacity of over one and one-half tons, but not in excess of two and one-half tons; one half cent per mile for each such mile traveled by any vehicle having a capacity over two and one-half but not in excess of four tons; one cent per mile for each such mile traveled by any vehicle having a capacity of over four tons, but not in excess of five tons; and one and one half cents per mile for each mile traveled by any vehicle having a capacity in excess of five tons. The ton capacity of all such vehicles shall be based, as to all trucks which have not been changed or rebuilt subsequent to their original manufacture, upon the factory list capacity thereof and upon all trailers, and all rebuilt or changed trucks upon the actual capacity thereof.

(c) Whenever any such motor vehicle is used for the transportation of both passengers and freight or express, the charges to be paid by it shall be computed upon the class of service for which the highest charge could be made against such vehicle under the provisions of this Act.

(d) For the purpose of computing the charges hereby imposed, every trailer shall be considered as a separate vehicle.

(e) Every such motor carrier which has, during any calendar year, paid property taxes in the State of New Mexico upon any motor vehicle so used over the highways in this State may apply the property taxes so paid as a credit against and deduct the amount thereof from the charges against such motor vehicle for the use of the highways by the provisions of this Act.

APPENDIX "M"

SECTION 141-234, 1929 COMPILATION
(Sec. 234, Ch. 133, Laws of 1921)

141-234. ASSESSMENT OF MERCHANDISE STOCKS.

The assessor shall ascertain the average value of stocks of merchandise for the year ending on the thirty-first day of December prior to the date of the assessment thereof, and such value shall be the value at which such merchandise shall be assessed.

In order to ascertain the average value of such merchandise the taxing authorities shall have access to all invoices made or other competent evidence that may be had to determine the same. In determining such average value, such deductions from the original cost of such merchandise shall be allowed, as may arise growing out of any conditions that will reduce the value from the original cost.